

Exhibit 18

OFFICIAL REPORT OF PROCEEDINGS

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

REGION 21

In the Matter of:

Cargill, Inc.,

Case No. 21-RC-133636

Employer,

and

United Food & Commercial
Workers Union Local No. 324,

Petitioner.

Place: Los Angeles, California

Dates: August 12, 2014

Pages: 1 through 274

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UNITED STATES OF AMERICA
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UNITED FOOD & COMMERCIAL
WORKERS UNION LOCAL NO. 324,

Petitioner.

Case No. 21-RC-133636

The above-entitled matter came on for hearing, pursuant to notice, before **SYLVIA MEZA**, Hearing Officer, at the National Labor Relations Board, Region 21, 888 South Figueroa Street, Los Angeles, California 90017, on **Tuesday, August 12, 2014, at 9:14 a.m.**

A P P E A R A N C E S

On behalf of the Employer:

DOUGLAS M. TOPOLSKI, ESQ
OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.
1909 K. Street NW, Suite 1000
Washington, DC 20006
Tel. 202-263-0242

On behalf of the Petitioner:

ROBERT A. CANTORE, ESQ.
TRAVIS S. WEST, ESQ.
GILBERT & SACKMAN
3699 Wilshire Boulevard, Suite 1200
Los Angeles, California 90010
Tel. 323-938-3000 Extension 348

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
Stephanie Puig-Mier	21	113	157/169 177/178	159/174 177/181	25
Carlos Alban	183	194	203/205 219	204/206 220	
Eddie Padilla	222	227	229/232	230	
Carlos Hernandez	239	248	249		
Israel Ramirez	252				
Stephanie Puig-Mier	264				

E X H I B I T S

<u>EXHIBIT</u>	<u>IDENTIFIED</u>	<u>IN EVIDENCE</u>
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P R O C E E D I N G S

1 HEARING OFFICER MEZA: All right, the hearing will
2 be -- on the record -- the hearing will be in order. This is a
3 formal hearing in the matter of Cargill, Case 21-RC-133636,
4 before the National Labor Relations Board. Hearing Officer
5 appearing for the National Labor Relations Board is Sylvia
6 Meza. All parties have been informed of the procedures of
7 formal hearing before the Board by service of a statement of
8 standard procedures with the notice of hearing. I have
9 additional copies of the statement for distribution if any
10 party wishes more.
11

12 Please be advised that the party which plans to order a
13 transcript for the purposes of preparing a brief should make
14 arrangements with their appointing service contractor to obtain
15 it on an expedited basis. The parties requests for an
16 extension of time to file briefs based upon a delay in receipt
17 or non-receipt of the transcript will normally be denied in the
18 event such arrangements for expedited delivery were not made by
19 the party.

20 Will counsel please state their appearances for the
21 record? For the Petitioner?

22 MR. CANTORE: Robert Cantore and Travis West.

23 HEARING OFFICER MEZA: For the Employer?

24 MR. TOPOLSKI: Douglas M. Topolski, Ogletree, Deakins.

25 HEARING OFFICER MEZA: Are there any other appearances?

1 Let the record show no response.

2 Are there any persons, parties, or labor organizations in
3 the hearing room at this time who claim an interest in this
4 proceeding?

5 MR. CANTORE: Petitioner does.

6 HEARING OFFICER MEZA: Okay. Let the record show no
7 further response.

8 I now propose to receive the formal papers and they have
9 been marked for identification as Board's Exhibit 1(a) through
10 1(i).

11 MR. CANTORE: No objection.

12 HEARING OFFICER MEZA: Okay, I'll get to that.

13 Through 1(i). Inclusive 1(i) being an index and
14 description of the entire exhibit. The exhibit has already
15 been shown to all parties.

16 Are there any objections?

17 MR. CANTORE: No objection.

18 HEARING OFFICER MEZA: Hearing no --

19 MR. TOPOLSKI: No objection.

20 HEARING OFFICER MEZA: Hearing no objections, the formal
21 papers are received into evidence.

22 **(Board Exhibit Numbers 1(a) through 1(i) Received into**
23 **Evidence)**

24 HEARING OFFICER MEZA: Are there any motions to intervene
25 in these proceedings to be submitted to the Hearing Officer at

1 this time?

2 Let the record show no response.

3 Will the Employer please state its full and correct name
4 for the record?

5 MR. TOPOLSKI: Cargill, Inc.

6 HEARING OFFICER MEZA: Okay. Are there any objections to
7 having the petition and other formal papers amended so that the
8 name of the Employer will appear in the captions thereon as
9 Cargill, Inc.?

10 Hearing --

11 MR. CANTORE: No objection.

12 HEARING OFFICER MEZA: Okay. Hearing no objections, the
13 amendment is allowed.

14 In an off-the record discussion the Employer stated that
15 the Employer, Cargill, Inc., a Delaware corporation with a
16 facility located in Fullerton, California is engaged in the
17 business of operating an oil processing facility. During the
18 past 12 months a representative, period, the Employer,
19 purchased and received goods valued in excess of \$50,000 which
20 goods were shipped directly to the Employer's Fullerton,
21 California facility from points located outside the State of
22 California.

23 Mr. Topolski, on behalf of the Employer do you stipulate
24 that this is a fair statement of the business and operations of
25 the Employer?

1 MR. TOPOLSKI: So stipulated.

2 HEARING OFFICER MEZA: Mr. Cantore, do you so stipulate on
3 behalf of the Petitioner?

4 MR. CANTORE: So stipulated.

5 HEARING OFFICER MEZA: The stipulation is received.

6 Is it possible to stipulate that the Employer is engaged
7 in commerce within the meaning of the Act?

8 Mr. Topolski, do you so stipulate on behalf of the
9 Employer?

10 MR. TOPOLSKI: Yes.

11 HEARING OFFICER MEZA: Mr. Cantore, do you so stipulate on
12 behalf of the Petitioner?

13 MR. CANTORE: Yes.

14 HEARING OFFICER MEZA: The stipulation is received.

15 Is the correct name of the Petitioner that which appears
16 in the petition involved in this case United Food & Commercial
17 Workers Union Local Number 324?

18 MR. CANTORE: Well, the number is not in the petition. I
19 mean, the world N-O is not in the petition.

20 HEARING OFFICER MEZA: Okay.

21 MR. CANTORE: So it should read United Food, ampersand,
22 Commercial Workers Union Local N-O 3 -- period, 324.

23 HEARING OFFICER MEZA: Okay. Are there any objections to
24 having the petition and other formal papers amended so that the
25 name of the Petitioner will correctly appear in the captions

1 thereon as United Food, ampersand, Commercial Workers Union
2 Local N-O, period, 324?

3 MR. TOPOLSKI: No objection.

4 HEARING OFFICER MEZA: Hearing no objection, the amendment
5 is allowed.

6 Is it possible to stipulate that the United Food &
7 Commercial Workers Union Local No. 324 is a labor organization
8 within the meaning of the National Labor Relations Act?

9 MR. TOPOLSKI: So stipulated.

10 MR. CANTORE: So stipulated.

11 HEARING OFFICER MEZA: Okay. The stipulation is received.

12 Has the Petitioner requested recognition from the Employer
13 regarding the petition for unit?

14 MR. CANTORE: No.

15 HEARING OFFICER MEZA: Okay. Does the Employer decline at
16 this time to recognize the Petitioner as exclusive collective
17 bargaining agent for the employees in the petition for unit
18 until such time as it or they are certified as such in an
19 appropriate unit determined by the Board?

20 MR. TOPOLSKI: Yes.

21 HEARING OFFICER MEZA: Okay. Can it be stipulated that
22 there has been no collective bargaining relationship between
23 the Employer and the Petitioner concerning the petition for
24 unit of employees?

25 MR. CANTORE: Yes.

1 MR. TOPOLSKI: Yes.

2 HEARING OFFICER MEZA: Okay. The stipulation is received.

3 Okay. Let the record reflect that there is no history of
4 collective bargaining between the parties involving the
5 petitioned for a unit. Are there any petitions pending in
6 other regional offices involving other facilities of the
7 Employer? Mr. Topolski on behalf of the Employer?

8 MR. TOPOLSKI: Yes.

9 HEARING OFFICER MEZA: There are other petitions pending?

10 MR. TOPOLSKI: As to other facilities --

11 HEARING OFFICER MEZA: In other --

12 MR. TOPOLSKI: -- not as to this unit.

13 HEARING OFFICER MEZA: Okay. Involving -- okay.

14 And, Mr. Cantore, to your knowledge?

15 MR. CANTORE: I think we're aware of one of the petitions
16 somewhere back east but --

17 HEARING OFFICER MEZA: Okay.

18 MR. CANTORE: -- nothing out here.

19 HEARING OFFICER MEZA: Okay. Do the parties contend that
20 there is a contract bar to an election in this case?

21 MR. CANTORE: No.

22 MR. TOPOLSKI: No.

23 HEARING OFFICER MEZA: Okay. All right. The Petitioner
24 asserts that the following unit is appropriate for the purposes
25 of collective bargaining and in an off-the-record discussion

1 the Petitioner has indicated that it was just to amend its
2 petition as follows:

3 Included all full-time and regular part-time packaging,
4 shipping, and receiving employees employed by the Employer at
5 its facility located at 566 North Gilbert Street, Fullerton,
6 California. Excluded all other employees, packaging leads,
7 shipping leads, office clerical employees, professional
8 employees, staffing agency employees, guards and supervisors as
9 defined in the Act.

10 Mr. Topolski, what is the Employer's position regarding
11 the petition for a unit?

12 MR. TOPOLSKI: It's not appropriate.

13 HEARING OFFICER MEZA: Okay. And, Mr. Cantore, what's the
14 Petitioner's position regarding the petition --

15 MR. CANTORE: It is --

16 HEARING OFFICER MEZA: -- for a unit?

17 MR. CANTORE: -- an appropriate unit.

18 HEARING OFFICER MEZA: Okay. And so based on off-the-
19 record discussions I am going to propose a couple of
20 stipulations with regard to certain job classifications that
21 the parties can agree should be included and excluded from the
22 unit if found appropriate.

23 I propose the following stipulation. The parties agree
24 that all full-time and regular part-time packaging, shipping,
25 and receiving employees employed by the Employer at its

1 facility located at 566 North Gilbert Street, Fullerton,
2 California should be included in any unit found appropriate by
3 the Board with the exception of the packaging leads and
4 shipping leads whose have alleged supervisory status will be
5 litigated here today.

6 Mr. Topolski, do you so stipulate on behalf of the
7 Employer?

8 MR. TOPOLSKI: We can stipulate to everything but I want
9 to make the record clear that it will always be or position
10 that the leads mentioned must be part of an appropriate unit.

11 HEARING OFFICER MEZA: Okay. And, Mr. Cantore, do you so
12 stipulate on behalf of the Petitioner?

13 MR. CANTORE: So stipulate on behalf of the Petitioner.

14 HEARING OFFICER MEZA: Okay. The stipulation is received.

15 Okay, along the same lines I propose a stipulation that
16 the parties agree that all other employees, office clerical
17 employees, professional employees, staffing agency employees,
18 guards and supervisors as defined in the Act should be excluded
19 from any unit found appropriate by the Board.

20 Mr. Topolski, do you so stipulate on behalf of the
21 Employer?

22 MR. TOPOLSKI: No, because that stipulation suggests that
23 everybody but the employees petitioned for by the Union should
24 be out of the unit. I think we're here to decide something
25 different today.

1 HEARING OFFICER MEZA: Okay.

2 MR. CANTORE: I don't -- I think you --

3 HEARING OFFICER MEZA: Yeah.

4 MR. CANTORE: -- read the part --

5 HEARING OFFICER MEZA: Yeah.

6 MR. CANTORE: -- with other employees. If you start -- if
7 you just cross that out I think the Employer would stipulate to
8 the rest.

9 HEARING OFFICER MEZA: Okay.

10 MR. TOPOLSKI: He might be right about that.

11 HEARING OFFICER MEZA: I'm sorry? Yeah, you agree with
12 that?

13 MR. TOPOLSKI: I think he might be right about that.

14 HEARING OFFICER MEZA: Okay.

15 MR. TOPOLSKI: I think what you meant to read --

16 HEARING OFFICER MEZA: Yeah.

17 MR. TOPOLSKI: -- is will we stipulate that the exclusions
18 in the petition --

19 HEARING OFFICER MEZA: Okay.

20 MR. TOPOLSKI: -- should be excluded from an unit,
21 correct?

22 HEARING OFFICER MEZA: Okay. Yes, yes. Okay, so you
23 would be okay with just starting with officer clerical
24 employees?

25 MR. TOPOLSKI: They should be included, yes.

1 HEARING OFFICER MEZA: Excluded.

2 MR. TOPOLSKI: Excluded, correct.

3 HEARING OFFICER MEZA: Yeah. Okay, and so the issue that
4 you have is with all other employees?

5 MR. TOPOLSKI: Correct.

6 HEARING OFFICER MEZA: Okay. All right.

7 MR. TOPOLSKI: Because all other employees would include
8 the classifications that were issued this morning.

9 HEARING OFFICER MEZA: Okay.

10 MR. CANTORE: Yeah. If he had agreed to that --

11 HEARING OFFICER MEZA: Okay.

12 MR. CANTORE: -- I would have jumped up and said let's
13 cancel the hearing.

14 HEARING OFFICER MEZA: Let's go -- okay. Well, that's
15 what had said off the record and you said that that was okay.
16 So I think -- all right. So let's go ahead and -- okay, I'm
17 just going to go ahead and restate the -- the stipulation then.
18 Okay.

19 Also, along the same lines I propose a stipulation that
20 the parties agree that office clerical employees, professional
21 employees, staffing agency employees, guards and supervisors as
22 defined in the Act should be excluded from any unit found
23 appropriate by the Board.

24 MR. CANTORE: That is correct.

25 HEARING OFFICER MEZA: Okay.

1 MR. CANTORE: So stipulated.

2 HEARING OFFICER MEZA: Okay.

3 MR. TOPOLSKI: So stipulated.

4 HEARING OFFICER MEZA: Okay. The stipulation is received.

5 All right. Okay, in an off-the-record discussion the
6 parties have stated that the following issues are in dispute.

7 Issue number one, whether the packaging and shipping
8 employees share an overwhelming community of interest under
9 specialty healthcare with the receiving, maintenance, terminal
10 and quality control employees so as to be included in a single
11 unit for purposes of collective bargaining. So the question is
12 what is the appropriate unit?

13 The Employer maintains that the appropriate unit consists
14 of packaging, shipping, maintenance, terminal, and quality
15 control employees. The Employer is seeking a wall-to-wall
16 unit. Per the Employer, there are twenty-two packaging
17 employees, nine shipping employees, four receiving employees,
18 six maintenance employees, four quality control employees, and
19 eight terminal employees for a total of 60 employees. Per the
20 Employer, two of the employees are classified as packaging lead
21 employees and one is employed as a shipping lead. The Employer
22 asserts the employees in these six job classifications all
23 share an overwhelming community of interest and should be in
24 the same bargaining unit.

25 Per the Employer, included in the group of 60 employees

1 are four packaging employees, two terminal employees, and one
2 plant clerical employees who are scheduled to be transferred to
3 the Fullerton, California facility from the Vernon, California
4 facility by the end of 2014. The transfer of these seven
5 employees will not be litigated today as no party is contending
6 that they are seeking a multi-facility unit. While the Union
7 concedes the six job classifications share some community of
8 interest, it also asserts they barely speak to each other and
9 the Union is satisfied that a unit consisting of only
10 packaging, shipping, and receiving employees is appropriate
11 even if not the most appropriate one.

12 Issue number two, whether the packaging leads, Jaime
13 Sedano and Rafael Rodriguez, the shipping lead, Ray Ramirez and
14 Steve Lim, who works in quality control department are
15 supervisors under the Act. The Union is seeking to exclude the
16 packaging leads, the shipping leads, and Steve Lim on the basis
17 that they are supervisors under Section 211 of the Act. The
18 Employer denies that the packaging leads, the shipping leads,
19 and that Steve Lim are supervisors under the Act and maintains
20 that they are employees are under the Act.

21 Mr. Topolski, does this accurately reflect the issues that
22 are in dispute and that will be litigated here today?

23 MR. TOPOLSKI: I would say general yes. The numbers have
24 changed a little bit. There's been a termination.

25 HEARING OFFICER MEZA: Okay.

1 MR. TOPOLSKI: One of the receiving people actually is a
2 packaging employee and we'll go over that --

3 HEARING OFFICER MEZA: Okay.

4 MR. TOPOLSKI: -- during the course of the hearing.

5 HEARING OFFICER MEZA: Okay.

6 MR. TOPOLSKI: And I would also like to add I am not
7 conceding that Specialty Healthcare is the proper test and
8 we're likely to challenge that too.

9 HEARING OFFICER MEZA: Okay, okay, all right.

10 And what's your position with the -- what is the proper
11 test then?

12 MR. TOPOLSKI: The usual community of interest standards.

13 HEARING OFFICER MEZA: Okay, okay, all right.

14 Okay, so the -- Mr. Cantore, does that accurately reflect
15 the issues that are before us today?

16 MR. CANTORE: Well, in addition to Specialty Healthcare I
17 would throw in the Board's recent Macy's case.

18 HEARING OFFICER MEZA: Okay, all right.

19 Okay. So, Mr. Cantore, please be aware that the issue of
20 supervisory status involves a statutory exclusion and the party
21 seeking to exclude employees on this basis bears the burden of
22 proof. You must present specific detailed evidence in support
23 of your position. General conclusionary statements by
24 witnesses will not be sufficient.

25 Mr. Topolski, please state -- please be advised that as

1 stated in Specialty Healthcare in cases in which a party
2 contends that a petition for a unit containing employees
3 readily identifiable as a group who share a community of
4 interest is nevertheless inappropriate because it does not
5 contain additional employees. The burden is on the party so
6 contending to demonstrate that the excluded employees share an
7 overwhelming community of interest with the included employees.

8 Okay. So, and in terms of the number of the employees you
9 said that there has been some changes. So, and then we also
10 have, you know, these other seven employees who are not working
11 at the facility in Fullerton at this time, correct?

12 MR. TOPOLSKI: That's correct.

13 HEARING OFFICER MEZA: Okay. So with those employees when
14 I ask you at the end of the -- the hearing to give me the total
15 number of employees and the disputed classifications and the
16 total number of employees I need you to make sure that you
17 state, you know, which -- the number that are there physically
18 right now and the ones that are, you know, in Vernon separately
19 so that it's clear that we're not, you know, mixing the numbers
20 together.

21 MR. TOPOLSKI: I have --

22 HEARING OFFICER MEZA: Okay. I just want the reader of
23 the record to understand that, you know, how many are there at
24 the facility and how many are expected to be transferred --
25 transferred to the facility. Okay?

1 MR. TOPOLSKI: I am going to introduce an exhibit with the
2 names of all the employees at issue.

3 HEARING OFFICER MEZA: Okay, all right.

4 Okay, so are we ready to call our first witness?

5 MR. TOPOLSKI: I think we are.

6 HEARING OFFICER MEZA: Okay. Okay, and who is your first
7 witness?

8 MR. TOPOLSKI: Stephanie Puig.

9 HEARING OFFICER MEZA: Okay.

10 MR. TOPOLSKI: Just be able to take a seat.

11 HEARING OFFICER MEZA: All right.

12 MR. TOPOLSKI: One more question before we start.

13 HEARING OFFICER MEZA: Yeah, sure.

14 MR. TOPOLSKI: What's the Region's position with
15 sequestering witnesses in a hearing like this?

16 HEARING OFFICER MEZA: Our position is that it's a
17 non-adversarial proceeding and that that's not --

18 MR. TOPOLSKI: Thought I would ask.

19 HEARING OFFICER MEZA: -- you know, necessary, so okay.

20 MR. CANTORE: That's what I thought.

21 MR. TOPOLSKI: Thought I would ask.

22 HEARING OFFICER MEZA: All right, okay.

23 Okay, so Mr. Topolski, this is your first witness.

24 And, I'm sorry, can you please raise your right hand? And
25 can I get your name please?

1 MS. PUIG: Stephanie Puig.

2 HEARING OFFICER MEZA: Stephanie --

3 MS. PUIG: Puig, P-U-I-G.

4 HEARING OFFICER MEZA: P-U-I-G, okay.

5 Whereupon,

6 STEPHANIE PUIG-MIER

7 having been duly sworn, was called as a witness herein and was
8 examined and testified as follows:

9 HEARING OFFICER MEZA: Okay. Can you please state and
10 spell your name for the record? And when you speak, please
11 make sure that you speak into the microphone and that you speak
12 clearly and as loud as possible, okay?

13 THE WITNESS: Okay. My name is Stephanie Puig,
14 S-T-E-P-H-A-N-I-E. Last name is P-U-I-G. Legal last name is
15 M-I-E-R, Mier. I'm not sure if that matters.

16 HEARING OFFICER MEZA: Okay. All right, Mr. Topolski.

17 MR. CANTORE: Well, what should we call you; Ms. Mier, Ms.
18 Puig?

19 THE WITNESS: You could call me Puig, it's fine.

20 MR. CANTORE: I'm sorry?

21 THE WITNESS: Either is fine.

22 MR. CANTORE: Okay.

23 HEARING OFFICER MEZA: Well, for purpose of the hearing
24 let's stick to one name. So --

25 MR. TOPOLSKI: I'm going to --

1 HEARING OFFICER MEZA: -- which one?

2 MR. TOPOLSKI: -- call her Ms. Puig.

3 THE WITNESS: That's --

4 HEARING OFFICER MEZA: Puig. Okay, all right. And that's
5 P-U-I-G?

6 THE WITNESS: Yes.

7 MR. TOPOLSKI: Correct.

8 HEARING OFFICER MEZA: Okay. Okay, Stephanie. All right,
9 Ms. Puig, Mr. Topolski, you may proceed.

10 MR. TOPOLSKI: Okay. Thank you.

11 **DIRECT EXAMINATION**

12 Q BY MR. TOPOLSKI: Good morning, Ms. Puig. Thanks for
13 coming today.

14 A Good morning.

15 Q You a little bit nervous?

16 A Yes.

17 Q No need to be. We're all generally nice people here. So
18 relax. We're just here to get so you -- I object.

19 Just I want to get your view on some things here this
20 morning and we appreciate you coming.

21 A Okay.

22 Q You've already stated your name for the record and spelled
23 it. And you work for Cargill, correct?

24 A Yes.

25 Q Can you tell us what your current title is at Cargill?

- 1 A Packaging and shipping supervisor.
- 2 Q Okay. And that's for the Fullerton facility, correct?
- 3 A Yes, it is.
- 4 Q How long have you worked at the Fullerton facility?
- 5 A Eight years.
- 6 Q Okay. And is packaging and shipping supervisor the only
- 7 title you've had at --
- 8 A No.
- 9 Q -- Fullerton? Walk us through your employment history at
- 10 Fullerton. What other titles have you had?
- 11 A I transferred to Fullerton as the transportation manager
- 12 and then I was the production scheduler and then I was the
- 13 terminal supervisor and I am currently the packaging and
- 14 shipping supervisor. I did a small stint for about a year on a
- 15 project where I was a super user for Tartan (phonetic).
- 16 Q Okay. Tell us what a super user is for Tartan is just so
- 17 the record is clear.
- 18 A We deployed SAP at our Fullerton facility. So they -- I
- 19 was part of the group that was selected to get trained and come
- 20 back and train our staff.
- 21 Q And for the record what is SAP?
- 22 A It's -- it's an operating system.
- 23 Q It's a computer system, correct?
- 24 A Computer system, yeah.
- 25 Q Okay. When were you -- and when you were on the Tartan

1 project you were away from the facility, correct?

2 A Yes.

3 Q And how long were you away from the facility?

4 A Approximately one year.

5 Q Okay. Now, who supervised the packaging and shipping
6 department while you were away?

7 A Initially Lindsay Farrell was our production management
8 engineer and then she had to leave for maternity leave.

9 Q And then who supervised it after that?

10 A Joe Rivera.

11 Q And what was Joe Rivera's title at the time?

12 A Terminal supervisor.

13 Q Okay. And that was in the early part of 2014; is that
14 correct?

15 A Yes.

16 Q All right. Is Mr. Rivera still employed by the company?

17 A No, he is not.

18 Q Who supervises the terminal department now?

19 A Currently I do.

20 Q Okay. All right. Tell us from 30,000 feet -- and the
21 picture is going to be a lot closer than that -- exactly what
22 the Fullerton facility does.

23 A The Fullerton facility brings in bulk oil and we will
24 either ship it out as is in smaller packages or in bulk trucks
25 or we will make it into another material. So we'll either

1 blend to make a different oil type or we will chill it and make
2 it into another oil type.

3 MR. TOPOLSKI: Okay. Let me show you what we're going to
4 mark as Employer's Exhibit 1.

5 **(Employer Exhibit Number 1 Marked for Identification)**

6 HEARING OFFICER MEZA: Thank you.

7 THE WITNESS: Thank you.

8 (Counsel confer)

9 Q BY MR. TOPOLSKI: Okay. I showed you what's been marked
10 as Employer's Exhibit 1. Can you identify that for me?

11 A This is an aerial view of our Fullerton facility.

12 Q Okay. And you had a chance --

13 A Excuse me.

14 Q -- to review that picture before your -- in preparation
15 for your testimony today, correct?

16 A Yes.

17 Q All right. And it's got a series of little numbers of it,
18 correct?

19 A Yes, it does.

20 Q And these numbers were placed there in preparation for
21 your testimony today, correct?

22 A Yes.

23 MR. TOPOLSKI: I'd like to move for the introduction of
24 Employer's Exhibit 1 so we can get that out of the way.

25 HEARING OFFICER MEZA: Okay. Is there --

1 MR. CANTORE: Voir dire?

2 VOIR DIRE EXAMINATION

3 Q BY MR. CANTORE: Did you take this picture?

4 A I did not.

5 Q Did you download it from the internet?

6 A Did I? No. Personally.

7 Q Do you know who did? Was this downloaded from the
8 internet?

9 MR. TOPOLSKI: This is an official company photo of an
10 aerial view of the plant.

11 MR. CANTORE: Oh, it is?

12 MR. TOPOLSKI: Yes.

13 HEARING OFFICER MEZA: Okay.

14 MR. CANTORE: Okay. No objection.

15 MR. TOPOLSKI: Okay.

16 HEARING OFFICER MEZA: Okay. So there is no objection to
17 the Employer's Exhibit 1 being received into evidence?

18 MR. TOPOLSKI: Right. And we're going to walk through all
19 the little numbers and let you know.

20 HEARING OFFICER MEZA: Okay. So, Employer's Exhibit 1 is
21 received into evidence.

22 MR. TOPOLSKI: Okay. Great.

23 **(Employer Exhibit Number 1 Received into Evidence)**

24 Q BY MR. TOPOLSKI: Okay. Now, let's just walk through as a
25 general matter -- we'll talk about the various employees and

1 what they do in just a couple of minutes. But in order for the
2 record to be clear and everybody to understand what you're
3 talking about, what I'd like you to do is just take a look at
4 this photograph and again describe for me the process of how
5 the oil comes in to how it goes out.

6 A Okay. So we are a terminal, so we receive the oil in bulk
7 either by railcars which is --

8 Q And the railcars would be reflected by that -- that long
9 black line which ends in number one, correct?

10 A Yes.

11 Q Okay.

12 A Or by bulk trucks.

13 Q And where do the bulk trucks come in to deliver the oil?

14 A They would come in -- they would deliver where number two
15 is.

16 Q Okay.

17 A It's our bulk unloading area.

18 Q Okay. And where does the oil go when it's -- after it's
19 delivered?

20 A It will go into -- it can go into either area of the tank
21 farm area. The majority of it will go to three, some of it
22 will go to four, and some can go to five as well.

23 Q Okay. And what happens after that?

24 A The oil -- excuse me -- the oil will either be stored in
25 the three area where it can get shipped out in bulk. It can

- 1 get --
- 2 Q Okay. Now let me stop you there. If it gets shipped out
- 3 in bulk how is that shipped out?
- 4 A It gets loaded in our bulk load-out which is number six.
- 5 Q Okay. And by what medium is it shipped out?
- 6 A By bulk tanker trucks.
- 7 Q Right, trucks, okay, good.
- 8 A Yes.
- 9 Q Okay. Go ahead.
- 10 A Okay. There is also blending tanks which is close to the
- 11 number seven mark.
- 12 Q Okay.
- 13 A And additive tanks there as well. We can blend to make
- 14 different oil types. And in number five area there is also
- 15 tanks there where the oil gets transferred to. So it would
- 16 either be blended and transferred there. It will get moved
- 17 from the three section into the five section as a single oil or
- 18 it can get moved as separate oils into the five section as well
- 19 and blended into another completely different oil.
- 20 Q Okay. And then where does it go from -- from five?
- 21 A So between the building and the tank there you can see
- 22 there's like a line that connects them.
- 23 Q Sure.
- 24 A Those are the lines that take the oil to the packaging
- 25 lines.

- 1 Q Okay. And then from packaging where does it go?
- 2 A So from packaging it will get --
- 3 Q Well, let me -- let me stop you. What happens in
- 4 packaging?
- 5 A So if it's going to get packed straight, if it's not going
- 6 to be further processed it will go to one of our four lines to
- 7 be packed either as a 35-pound jib, which is a plastic jug in a
- 8 cardboard box. It will get packed as a 50-pound cube, which is
- 9 a shortening in a bag in a box. It will get packed on our
- 10 five-quart line or the ole line, which is just different types
- 11 of bottles, smaller bottles.
- 12 Q Okay. And after it's packed or processed or whatever in
- 13 the packaging department where does it go then?
- 14 A It gets put away and --
- 15 Q Let me stop you right there. Where is the packaging
- 16 department on this diagram?
- 17 A It's around the number nine.
- 18 Q Okay. And that's where -- that's where all four lines are
- 19 in that area where number nine is?
- 20 A Yes.
- 21 Q Okay. What happens after that?
- 22 A So it would get put away. But in this process there is
- 23 analysis that is done throughout the entire process from
- 24 beginning to end. So I don't know --
- 25 Q Okay. And what --

- 1 A -- if you want me to explain that as well.
- 2 Q Okay. And we'll talk about that in detail when we get to
- 3 the various employees that do that.
- 4 A Okay.
- 5 Q But I think what you're saying, to make the record clear,
- 6 there is some analysis and sampling that takes place prior to
- 7 the time the oil gets to one and two and the time it gets to
- 8 number nine, correct?
- 9 A Yes.
- 10 Q Okay. All right, after it goes to number nine where does
- 11 it go?
- 12 A It will get put away into the finished goods area.
- 13 Q Okay. And where is the finished goods area on this
- 14 exhibit?
- 15 A So there is a line of tens across here which --
- 16 Q Uh-huh.
- 17 A -- would kind of signify where it would begin.
- 18 Q Okay. Now, where the lines of tens are there's a big
- 19 space between 10 and where number 18 and number 11 is. Is that
- 20 a warehousing area too?
- 21 A Yeah.
- 22 Q Okay. Okay, and that's what you call put-away, correct?
- 23 A Yes.
- 24 Q Okay.
- 25 A It's put away in that area, yes.

- 1 Q It's a warehouse there, right?
- 2 A Yeah, warehousing.
- 3 Q Okay. What we call put-away. Just want to make sure the
- 4 record is clear as to what we're doing. Okay, so after we put
- 5 it in the put-away department what happens after that?
- 6 A So then it will get shipped out in the shipping
- 7 department.
- 8 Q Which is where?
- 9 A Which is along the line of where number 11 is.
- 10 Q Okay. All right, and then how -- is it shipped how? Tell
- 11 us how.
- 12 A It is shipped in van trucks.
- 13 Q Okay. And whose trucks are they?
- 14 A They are contracted either by Cargill or by the customer.
- 15 Q Okay. So they're third-party trucks, they're not ours?
- 16 A Yes, they're third-party.
- 17 Q Now, in addition to oil, what else comes into the plant?
- 18 A Raw materials and other miscellaneous.
- 19 Q Okay. When you say raw materials just give us a short,
- 20 short list of the kinds of raw materials you're talking about.
- 21 A So for packaging we would have jibs, empty jibs, pallets,
- 22 slip sheets, stretch wrap, bags, cartons, trays.
- 23 Q And where does that come into the plant?
- 24 A That comes in where the number 12 is on that.
- 25 Q Okay. And that's the receiving dock?

- 1 A Yes.
- 2 Q Okay. Now, where is -- where are those items stored?
- 3 A They're stored close to where that number 12 is, just up
- 4 top of that area there.
- 5 Q Okay. Are there any items that are received there that
- 6 are stored other places in the facility?
- 7 A The labels are stored along the end here where number 16
- 8 is that we have a label room there.
- 9 Q Okay.
- 10 A There's two label rooms actually, they're stored there.
- 11 Q Are there any storage compartments in the building labeled
- 12 14?
- 13 A Yeah. We have miscellaneous storage cages that are in
- 14 building 14. So there is some receiving that is done in
- 15 building 13 and those items will be stored in those cages of
- 16 14.
- 17 Q Okay. Now, building 14, what is that building called?
- 18 A The terminal building.
- 19 Q Okay. And what's housed in building 14?
- 20 A There are terminal offices, the EHS office, HR office, the
- 21 engineering office, storage, the cages that store miscellaneous
- 22 items that come in. There's a break room. There's bathrooms.
- 23 Q Okay. Now, what's in -- what's in building 15?
- 24 A Fifteen is the lab.
- 25 Q Okay. And what's in building 13?

1 A Maintenance shop.

2 MR. TOPOLSKI: Okay. All right, I think that's a good
3 general description.

4 HEARING OFFICER MEZA: I'm sorry, which one was the lab?

5 THE WITNESS: Fifteen.

6 HEARING OFFICER MEZA: Fifteen, okay. Okay, and the last
7 one you mentioned?

8 THE WITNESS: Thirteen is the maintenance shop.

9 HEARING OFFICER MEZA: Okay. The maintenance shop?

10 THE WITNESS: Yes.

11 HEARING OFFICER MEZA: Okay. Thank you.

12 MR. CANTORE: What did you call 14 again? I'm sorry, you
13 called that the bulk building?

14 THE WITNESS: Terminal building.

15 MR. CANTORE: Oh, the terminal building.

16 MR. TOPOLSKI: That's the terminal building.

17 MR. CANTORE: Terminal building.

18 HEARING OFFICER MEZA: Okay.

19 MR. TOPOLSKI: BY MR. TOPOLSKI: Okay. Now, let's -- I'm
20 going to show you what I'm going to mark as Employer's Exhibit
21 2. Employer's Exhibit 2, Employer's Exhibit 2.

22 THE WITNESS: Thank you.

23 HEARING OFFICER MEZA: Thank you.

24 **(Employer Exhibit Number 2 Marked for Identification)**

25 Q BY MR. TOPOLSKI: Okay. Can you identify that document

1 for me?

2 A Yes. This is a list of employees.

3 Q Okay. Now, is this -- if you'll let me lead her for just
4 a second I think I can verify this and get this in as an
5 exhibit -- is this a list of employees that you understand the
6 Employer wants to be in the unit for bargaining in this case?

7 A Yes.

8 Q Okay. Now, is this the list of -- of the -- of all the
9 employees in that bargaining unit at this time or that proposed
10 voting unit I guess we should call it?

11 A The one that -- I'm sorry, can you --

12 Q Is Exhibit 2 --

13 A Uh-huh.

14 Q -- a complete list of all the employees currently working
15 in the Fullerton facility that you understand to be in the
16 various positions the unit thinks should vote in this election?

17 A It is except for the bottom area where the Vernon
18 employees are.

19 Q Okay, right. And tell us --

20 A But everyone else, that's the question.

21 Q -- what that Vernon group is.

22 A These are the Vernon employees that will be transitioning
23 over.

24 MR. TOPOLSKI: And they're the Vernon people as to which,
25 Madam Hearing Examiner, we had a stip to. So we're not going

1 to discuss those today. I just --

2 MR. CANTORE: Right. Okay.

3 MR. TOPOLSKI: They're on the exhibit and we know who they
4 are. And with that explanation, can we get Exhibit 2 into
5 evidence?

6 MR. CANTORE: No objection.

7 HEARING OFFICER MEZA: Okay, and -- but just to clarify,
8 we didn't actually have a -- get a stip as to those
9 individuals. Not something that we did on the record. We just
10 stated that they will be --

11 MR. TOPOLSKI: That's --

12 HEARING OFFICER MEZA: -- you know --

13 MR. TOPOLSKI: Right.

14 HEARING OFFICER MEZA: -- transitioning over.

15 MR. TOPOLSKI: Right. And I --

16 HEARING OFFICER MEZA: Okay.

17 MR. TOPOLSKI: And I'm not going to hold the Union to
18 stippling to the identity of those people. I'm just saying --

19 HEARING OFFICER MEZA: Okay.

20 MR. TOPOLSKI: -- I had them on this exhibit. And I'm
21 representing on the record that those are the seven people
22 we're talking about.

23 HEARING OFFICER MEZA: Yeah, who will be transitioning
24 over --

25 MR. TOPOLSKI: Right.

1 HEARING OFFICER MEZA: -- sometime before --

2 MR. TOPOLSKI: Right.

3 HEARING OFFICER MEZA: -- the end of 2014.

4 MR. TOPOLSKI: And I understand if --

5 HEARING OFFICER MEZA: Okay.

6 MR. TOPOLSKI: -- the Union wants to take a different

7 position, they're not waiving that.

8 HEARING OFFICER MEZA: Okay.

9 MR. TOPOLSKI: I understand that.

10 HEARING OFFICER MEZA: All right. Okay. So the --

11 there's no -- hearing no objection to the admission of

12 Employer's Exhibit 2, the Employer's Exhibit 2 will be -- is

13 received into the record.

14 **(Employer Exhibit Number 2 Received into Evidence)**

15 Q BY MR. TOPOLSKI: Okay. Now I'd like to start with
16 talking about what the employees -- what these employees do.

17 And I think the best place to start, Ms. Puig, is in the
18 terminal area, because that's where the oil comes in, right?

19 A Yes.

20 Q Okay. How many shifts do the employees work at the
21 terminal area?

22 A There are three shifts.

23 Q Okay. Are they etched in stone?

24 A The shifts itself or --

25 Q Yes.

- 1 A No. They're not.
- 2 Q So each employee working each shift would vary in the
3 number of hours?
- 4 A Yes.
- 5 Q Okay. All right. Let's talk about the employees assigned
6 for the first shift first. All right. We've got Jonathan
7 Alvarado, all right? Actually, he's not -- let's talk about
8 third shift first, all right?
- 9 A Uh-huh.
- 10 Q Mr. Alvarado, what shift does he work?
- 11 A He works third shift.
- 12 Q Okay. And about what hours does he work currently?
- 13 A About 10:30 to 7:00.
- 14 Q Okay. And what does he do?
- 15 A He receives the railcar switch in. In the evening, we
16 receive our switch. So he will be there for the switch to be
17 received. He'll do the verification.
- 18 Q Okay. Now tell me where on Exhibit 1 he works.
- 19 A He starts his day at 14.
- 20 Q Okay.
- 21 A But the switch will come in on one --
- 22 Q Okay. Now what --
- 23 A -- the rail switch.
- 24 Q -- does he do at 14 when he starts his day?
- 25 A He gets his paperwork, to see what the railcars will be

1 brought in.

2 Q Okay. Now, when he receives the railcars, exactly what is
3 his job? What does he do there?

4 A So he verifies that they are the correct cars, that they
5 are in the right order to unload, because they need to be in
6 specific spots to get to specific areas of the tank farm.

7 Q Okay.

8 A He will sample the cars and take the samples to the lab.

9 Q Okay. Let me stop you right there. When you say he
10 collects samples and takes them to the lab, give me some detail
11 on that. What does that entail exactly?

12 A So for us to move any oil, it has to be approved by the
13 lab prior to doing so. So he will take a, probably about a two
14 cup sample jar and he will take oil from each car that's
15 intended to be unloaded to the lab and let them -- with the
16 information of the railcar and where it's going.

17 Q So he's going to walk from that long line of black cars in
18 number one over to building 15?

19 A Fifteen. Yes.

20 Q And he physically walks there?

21 A Yes, he does.

22 Q Okay. And he physically walks there?

23 A Yes, he does.

24 Q Okay. And who does he talk to in building 15?

25 A The lab tech that would be on duty at that time.

1 Q Okay. And what does he do with the lab tech on duty at
2 the time?

3 A So he'll bring them the samples and let them know.
4 They'll communicate if anything's a priority, which will be ran
5 first.

6 Q Okay --

7 A And then --

8 Q -- and what does the lab tech do with the sample?

9 A They will run analysis on them to insure they're in spec
10 before we unload them.

11 Q Okay. Now, how long does it take for a sample to be
12 inspected for the car is cleared to unload?

13 A It takes -- it can take about 20 to 30 minutes, depending
14 upon what is going on, if the equipment's already in use for a
15 different sample or --

16 Q Okay. So now, after Mr. Alvarado gets the sample clear,
17 what does he do?

18 A So when the lab approves the rail for unload, he's hooking
19 up the cars. If the cars require steam, he'll hook up steam
20 and nitrogen and what we call roll the car, which moves the
21 oil, so that it's melting, so that it can be pumped out.

22 Q Okay.

23 HEARING OFFICER MEZA: Okay, I just want to state one
24 thing on -- for the record. When the lab techs that you're
25 referring to, they're the quality control employees, correct?

1 THE WITNESS: Yes.

2 HEARING OFFICER MEZA: Okay, because --

3 MR. TOPOLSKI: Correct.

4 HEARING OFFICER MEZA: -- we're using the --

5 MR. TOPOLSKI: Right.

6 HEARING OFFICER MEZA: -- terms interchangeably, so --

7 MR. TOPOLSKI: Right. Exactly. I'm sorry.

8 HEARING OFFICER MEZA: Okay. So -- and you --

9 MR. CANTORE: Can we have a stipulation to that effect,
10 that any reference to lab employees, we're referring to the
11 quality control on the Employer's Exhibit 2?

12 HEARING OFFICER MEZA: Okay.

13 MR. TOPOLSKI: So stipulated.

14 HEARING OFFICER MEZA: Okay. The stipulation is received.

15 MR. TOPOLSKI: Okay.

16 HEARING OFFICER MEZA: Okay.

17 MR. TOPOLSKI: And we'll talk more about the lab techs in
18 a little bit.

19 HEARING OFFICER MEZA: Okay. That's fine.

20 MR. TOPOLSKI: Okay.

21 Q BY MR. TOPOLSKI: Okay. Now, so Mr. Alvarado spends the
22 bulk of his work day in what areas of Exhibit 1?

23 A In the one, the 14 or the 15.

24 Q Okay. Prior to Mr. Alvarado working in the terminal area,
25 did he have another job at Fullerton?

- 1 A He came to us from the packaging department.
- 2 Q Okay. What does Daniel -- first of all, Daniel Castanon.
- 3 What shift does he work on?
- 4 A He's on third shift.
- 5 Q Okay. About what are his hours currently?
- 6 A His hours are currently 10:30 to 7:00, but he'll come in
- 7 early to do -- he does transfers and if he needs to do more
- 8 transfers than an eight hour period would allow, he'll come in
- 9 early --
- 10 Q Okay.
- 11 A -- to do those.
- 12 Q Now, what does a transfer person do?
- 13 A He moves the oil through the facility and he preps for
- 14 bulk load out and for production --
- 15 Q Okay. Now --
- 16 A -- for packaging.
- 17 Q -- you say he moves oil for the facility. Where in
- 18 Exhibit 1 would he do that?
- 19 A He would move oil between -- in three to that seven area,
- 20 where blending is done into the five area as well.
- 21 Q Okay. Now, does he go to each of those areas every day?
- 22 A Yes, he does.
- 23 Q Okay. All right. Who schedules the blending?
- 24 A Kelli Stiver, the production scheduler.
- 25 Q Okay. And how does Mr. Castanon get that schedule?

1 A Kelli takes the schedule to the lab and then Danny
2 collects it from the lab.

3 Q Okay. Kelli takes it to the lab from which building to
4 which building?

5 A Where the number 16 is on the warehouse building is where
6 she offices.

7 Q All right.

8 A And then fif -- she'll take it. She'll walk it over --

9 Q To 15?

10 A -- to 15. Uh-huh.

11 Q Okay. So Mr. Castanon will go from wherever he is at
12 four, seven or three down to 15, too, correct?

13 A Yeah. He'll start at 14, go to 15 and then from there,
14 he'll --

15 Q He'll work in the tank area.

16 A -- he'll work in the tank farm area.

17 Q Okay. Now, I think the next pers -- is there -- the next
18 person we want to talk about is Antunez -- I'm butchering
19 names. I apologize. Cervando. What shift does he work?

20 A He's on first shift.

21 Q Okay. And his hours are generally what?

22 A Generally he comes in at 5:00 till about 3:00.

23 Q Okay. And what does he do?

24 A He unloads. He does bulk unloading. Primarily railcars,
25 but he can do trucks as well.

- 1 Q Okay. So where would he work on this diagram?
- 2 A So he would start at 14 in the terminal building
- 3 initially. And then he would be working on one, where the rail
- 4 cars are. Once Jonathan's shift is over and they're hooked up,
- 5 Cervando will then pump these into the tanks.
- 6 Q From where on the diagram?
- 7 A From one.
- 8 Q Uh-huh.
- 9 A Line one to either three, four or five.
- 10 Q Okay. And he'll go to three, four, or five as well as to
- 11 -- along number one, correct?
- 12 A Yes.
- 13 Q Okay. All right. How long has he been working at
- 14 Fullerton?
- 15 A He's been there for, I would say approximately almost two
- 16 years.
- 17 Q Okay. And where was he before that?
- 18 A From the Vernon facility.
- 19 Q Okay. All right. Next person I want to talk about is --
- 20 MR. CANTORE: I'm sorry to interrupt. Who was that we
- 21 were just talking about?
- 22 THE WITNESS: Cervando Antunez.
- 23 HEARING OFFICER MEZA: He's number in the --
- 24 MR. CANTORE: Okay.
- 25 HEARING OFFICER MEZA: -- terminal --

1 MR. CANTORE: Okay.

2 HEARING OFFICER MEZA: -- section.

3 MR. CANTORE: I'm sorry.

4 MR. TOPOLSKI: No problem. It's get confusing. And if we
5 can get the record clear, that's great.

6 Q BY MR. TOPOLSKI: The next person I want to talk about is
7 Mike Brown. What shift does he work?

8 A He's on first shift.

9 Q Okay. And what does he do?

10 A He's currently on a 50/50 role between the terminal and
11 the engineering department.

12 Q Okay. Explain to us what that means.

13 A So we currently have a project going on in the tank farm
14 and he helps with that project on prep for tanks and different
15 items for the engineering department.

16 Q And where in the tank farm is that project on this
17 diagram, Exhibit 1?

18 A It's in five, four and three.

19 Q Okay.

20 A And seven.

21 Q Okay. And when he's --

22 A Virtually the entire tank farm.

23 Q And when he's not working on that project, what is he
24 doing?

25 A He is either at bulk load out or -- which is number six.

- 1 Or he will unload trucks as well, number two.
- 2 Q Okay. Do you know how long he's been at Fullerton?
- 3 A I think approximately 10 years.
- 4 Q Okay. Next person I want to talk about is Daniel Verdugo.
- 5 And what shift does he work?
- 6 A He's on first shift.
- 7 Q Okay. And do you know about what his hours are these
- 8 days?
- 9 A 5 till about 3:00.
- 10 Q Okay. And what does he do?
- 11 A Currently with the new SAP deployment, he does a lot of
- 12 the SAP clerical data entry type stuff.
- 13 Q And where does he work?
- 14 A In building 14.
- 15 Q Okay. Does he go anywhere else in the -- in -- on Exhibit
- 16 1?
- 17 A Yes.
- 18 Q Where --
- 19 A He --
- 20 Q -- else does he go?
- 21 A -- as time allows, he's still working in the terminal.
- 22 He'll unload trucks at two. He can do transfers as well. So
- 23 he'll be anywhere in the tank farm at three, four, five area.
- 24 Q Okay.
- 25 A He can do bulk load out --

1 Q Okay.

2 A -- or he can do rail unload as well.

3 Q Prior to working in the terminal area, did he have another
4 job at Fullerton?

5 A He came from the packaging department --

6 Q Okay.

7 A -- prior to the terminal.

8 HEARING OFFICER MEZA: Okay. And just to clarify for the
9 record. Every time you're calling out numbers, you're
10 reference -- this is a reference to the numbers that are on
11 Employer's Exhibit 1, correct?

12 THE WITNESS: Yes.

13 MR. TOPOLSKI: Correct. One of the --

14 HEARING OFFICER MEZA: Okay. And this is just --

15 MR. TOPOLSKI: -- little yellow dots.

16 HEARING OFFICER MEZA: -- for the reader of the record.
17 Okay. You said something about SAP deployment. Can you just
18 explain what that is? What does SAP stand for? Is that some
19 sort of acronym?

20 THE WITNESS: I don't --

21 MR. TOPOLSKI: SAP is a software company.

22 HEARING OFFICER MEZA: Oh, okay.

23 MR. TOPOLSKI: It's a -- one that Ernie Els is sponsored
24 by. And --

25 HEARING OFFICER MEZA: Okay.

1 MR. CANTORE: But what does it do?

2 MR. TOPOLSKI: It is an overarching computer system that
3 takes care of everything from payroll to inventory --

4 MR. CANTORE: Oh, okay.

5 MR. TOPOLSKI: -- to production. And it's being --

6 MR. CANTORE: Okay.

7 MR. TOPOLSKI: -- integrated into the company at large.

8 HEARING OFFICER MEZA: Okay.

9 MR. TOPOLSKI: And some of these employees are actually
10 participating in that integration process.

11 HEARING OFFICER MEZA: So it's a computer program that
12 you're --

13 MR. TOPOLSKI: Right.

14 HEARING OFFICER MEZA: -- using at the company.

15 MR. TOPOLSKI: Right.

16 HEARING OFFICER MEZA: Okay.

17 MR. TOPOLSKI: So you'll have some of these --

18 HEARING OFFICER MEZA: Thank you.

19 MR. TOPOLSKI: -- production department people --

20 HEARING OFFICER MEZA: Okay.

21 MR. TOPOLSKI: -- all right --

22 HEARING OFFICER MEZA: Okay.

23 MR. TOPOLSKI: -- terminal packaging, whatever, will be
24 involved in implementing this computer software.

25 HEARING OFFICER MEZA: Okay.

1 MR. TOPOLSKI: That's what we're talking about.

2 HEARING OFFICER MEZA: Okay.

3 MR. TOPOLSKI: Okay?

4 HEARING OFFICER MEZA: Thank you.

5 MR. TOPOLSKI: All right.

6 Q BY MR. TOPOLSKI: Okay. The next person I think we wanted
7 to talk about was Ernesto Rivera. Do you know which shift he
8 works?

9 A He's on first shift.

10 Q Okay. And generally, what are his hours?

11 A His hours are generally about 5:00 to 3:00 as well.

12 Q Okay. And what does he do?

13 A Currently he's at bulk load out, but he is in -- is
14 capable of running unloading. He can unload trucks. He can do
15 transfers. He can cover virtually any terminal area.

16 Q Okay. Now when you say bulk unloading, that's in area
17 where?

18 A One and two. Both -- tanker -- rail tankers or truck
19 tankers.

20 Q Okay. When he's loading trucks, where is he working?
21 What area?

22 A He's at number six.

23 Q Great. Okay. Prior to his working at Fullerton, do you
24 know where he worked?

25 A He worked at Vernon.

1 Q Okay.

2 HEARING OFFICER MEZA: And was that 5:00 a.m. to 3:00 --

3 THE WITNESS: 3:00 p.m.

4 HEARING OFFICER MEZA: -- 3:00 p.m.?

5 THE WITNESS: Yes.

6 HEARING OFFICER MEZA: So 5:00 a.m. to 3:00 p.m.

7 THE WITNESS: Yes.

8 HEARING OFFICER MEZA: Okay. Can you please just state

9 that when you state the times?

10 THE WITNESS: Yes.

11 HEARING OFFICER MEZA: Okay.

12 THE WITNESS: Sorry.

13 HEARING OFFICER MEZA: Thank you.

14 Q BY MR. TOPOLSKI: Okay. What about Roman Smith?

15 A Roman --

16 Q What does he do?

17 A -- he is currently on first shift, because he's cross

18 training. Yesterday was his first day back into the terminal.

19 So he's learning the SAP system.

20 Q Okay. So when he works, where is he working in this

21 building? In this -- Exhibit 1? I'm sorry.

22 A Right now, he's in building 14 working with Daniel

23 Verdugo.

24 Q Okay. And what did he do prior to working on this SAP

25 integration?

- 1 A He was working in the lab, building 15.
- 2 Q Okay. All right. And is -- does -- is he doing SAP full
- 3 time now?
- 4 A He is just learning. He -- it's a bit of a process to
- 5 learn. It's --
- 6 Q Okay. What else does he do?
- 7 A He's a terminal operator, so he will recei -- he would
- 8 normally receive railcars on his -- on third shift.
- 9 Q Okay. And that's the job that Mr. Alvarado was doing?
- 10 A Yes.
- 11 Q Is that correct? Okay. Jaimar Williams. What's -- what
- 12 does he do?
- 13 A He's on second shift.
- 14 Q Uh-huh.
- 15 A So he is -- he does bulk load out number six. He will
- 16 also finish up any unloading that needs to be done during
- 17 second shift as well, whether it's in one, which is the rail,
- 18 or two, the truck.
- 19 Q Okay. And where on Exhibit 1 does he spend his day
- 20 working?
- 21 A Six.
- 22 Q Okay. Any other places?
- 23 A In one for unload and two for unload.
- 24 Q Okay. Prior to him coming to the terminal, did he have
- 25 any other position at Fullerton?

1 A Yes, he worked in the packaging department.

2 Q So --

3 HEARING OFFICER MEZA: You said he worked second shift,
4 right?

5 THE WITNESS: Yes.

6 MR. TOPOLSKI: Correct.

7 HEARING OFFICER MEZA: What are the hours for second
8 shift?

9 THE WITNESS: He works from 12:30 to 11:00.

10 HEARING OFFICER MEZA: 12:30 what?

11 MR. TOPOLSKI: P.

12 THE WITNESS: 12:30 p.m.

13 HEARING OFFICER MEZA: To 11:00 p.m.?

14 THE WITNESS: To 11:00 p.m.

15 HEARING OFFICER MEZA: Okay. And first shift. What are
16 the hours for first shift again?

17 THE WITNESS: 5:00 a.m. to 3:00 p.m.

18 HEARING OFFICER MEZA: Okay. Thank you.

19 Q BY MR. TOPOLSKI: Let's make sure the record's clear. Do
20 those hours vary from person to person and day to day?

21 A Yeah. They -- those would be with the overtime that would
22 be -- right now, we're using a little more overtime.

23 Q Okay.

24 MR. TOPOLSKI: I just want to make sure the record's clear
25 that not everybody works those same hours every --

1 HEARING OFFICER MEZA: Okay.

2 MR. TOPOLSKI: -- day.

3 HEARING OFFICER MEZA: Okay.

4 MR. TOPOLSKI: All right?

5 Q BY MR. TOPOLSKI: Okay. So we've talked about what the
6 people in the terminal department does -- do. Now, after the
7 oil is -- comes to the premises, I think you mentioned that
8 everything has to do -- go through a quality check, correct?

9 A Yes.

10 Q All right. So let's talk about how that happens. Again,
11 the quality department is located in what building?

12 A Fifteen.

13 Q Okay. Is that also called the lab?

14 A Yes.

15 Q All right. And what's the purpose of this department?

16 A It's a quality department. And we are a food facility, so
17 it's to insure that our product is inspect.

18 Q They inspect everything?

19 A They run analysis every time oil is moved.

20 Q Okay. Now, when you say every time oil is moved, that
21 could be different movements within the plant at different
22 times, correct?

23 A Yes.

24 Q And what do you mean exactly? Explain that for the
25 record.

1 A So, they will analyze the railcar before it's unloaded or
2 the truck. They will analyze.

3 Q Okay. Now let me step you there. When you say it's
4 analyzed from the rail car to the truck, that means somebody
5 from the terminal group brings it from one or two to 15. Is
6 that right?

7 A Yes.

8 Q And we talked about those people. Okay. How else?

9 A Once the product is unloaded to a tank, now we will get a
10 tank sample and that tank sample will then also be analyzed.

11 Q Okay. Now who brings the tank samples to the lab?

12 A The terminal operators.

13 Q Okay. Now, where else can they get samples?

14 A So if the oil is blended --

15 Q Correct.

16 A -- we're going to get a blended sample of the new oil that
17 we've made. If it's --

18 Q Now, where do blended samples come from? Where on this
19 diagram do they come from?

20 A There are blend tanks by seven. And those will be used if
21 there's ingredients, which are right next to seven as well.

22 Q Okay.

23 A And then also blends can be made in five.

24 Q Okay.

25 A And they can also be made in three as well.

1 Q Okay. What about -- is there any blends made in nine on
2 the lines?

3 A There's no blends on the line, but there are samples still
4 taken on the line.

5 Q Okay. Tell me what kinds of samples in that -- now, are
6 those samples taken from the line number nine back to the lab
7 at number 15?

8 A Yes.

9 Q Who takes those samples there?

10 A The lead will take the samples.

11 Q Okay. And what samples are they?

12 A They're the oil -- they're called line samples for what
13 we're running.

14 Q Okay. Now --

15 A And then there's also the chilled oil, which is area eight
16 would be where the votator room is.

17 Q Okay.

18 A So we also will chill the oil to change the viscosity of
19 the oil. And that only will start in number five. It'll go
20 through a chilling process. And I'll come back to a
21 destination tank in area five.

22 Q Okay. Now, who takes the samples from number eight to
23 number 15?

24 A The votator operator.

25 Q Okay. The votator operator. And what department is the

- 1 votator operator in?
- 2 A In the packaging.
- 3 Q Okay. And we'll talk about that person a little bit
- 4 later. Actually, there's more than one, correct?
- 5 A Yes.
- 6 Q So people from packaging will go from number eight or
- 7 number nine over to building 15. Is that what you're saying?
- 8 A Yes. And then to the tank farm five as well.
- 9 Q Okay. Great. Okay. All right, let's talk about the
- 10 quality people and what they do, all right? Let's talk first
- 11 about Steve Lim. Do you know what his title is?
- 12 A He is, I believe a technician III.
- 13 Q Okay. What does Steve Lim do as a technician III?
- 14 A So, he calibrates instruments and --
- 15 Q Where does he calibrate the instruments?
- 16 A In the lab.
- 17 Q Okay. Which is building 15, correct?
- 18 A Yes.
- 19 Q Okay.
- 20 A So the instruments used for analysis. He's an instrument
- 21 technician for that. He can run analysis as well.
- 22 Q At building 15.
- 23 A At building 15.
- 24 Q Okay. What else does he do?
- 25 A He is working right now, with the Vernon transition

1 coming, we are -- actually, today, we're running a test. He
2 will walk with the rabbi through the areas.

3 Q Now, when you say he'll walk with the rabbi through the
4 area, he will leave building 15?

5 A Yes.

6 Q And he takes a rabbi with him?

7 A Yes.

8 Q And where does he go from building 15 with the rabbi?

9 A He goes to the packaging lines in -- where number nine is.

10 Q Okay. And then what does he do with the rabbi there?

11 A They go through to check to insure that everything is
12 kosher.

13 Q Literally.

14 A Literally kosher, yes.

15 MR. CANTORE: That's the only reason you need a rabbi.

16 MR. TOPOLSKI: It's exactly -- well, that's not the only
17 reason you need a rabbi, but --

18 MR. CANTORE: Well I used --

19 MR. TOPOLSKI: -- in this case, it's the only reason --

20 MR. CANTORE: I used --

21 MR. TOPOLSKI: -- we need a rabbi there, so --

22 MR. CANTORE: I used to represent the rabbis in New York
23 who used to go around and do the meat markets.

24 MR. TOPOLSKI: I hear you.

25 Q BY MR. TOPOLSKI: Okay, so do they have any interaction

- 1 with the operators while they do that?
- 2 A Yes, he --
- 3 Q And what kind of interaction is that?
- 4 A He'll communicate with them just as passing by. He'll
- 5 also check master sanitation schedules to insure those are
- 6 being filled out properly.
- 7 Q Okay. Now, if the master sanitation schedule is not being
- 8 filled out properly, what does Steve Lim do about that?
- 9 A He comes to let me know.
- 10 Q Okay. And then what do you do about it?
- 11 A Then I will address it with the employees.
- 12 Q Okay. How -- for what other purposes does he -- does
- 13 Steve Lim leave the lab to go into the area of number nine?
- 14 A So he will go to nine. He'll go -- we also have paperwork
- 15 that gets filled out on the line. He'll do a verification on
- 16 that while he's in the area as well.
- 17 Q Okay. And how often does he do that?
- 18 A I don't know how often he's doing it, but one lab tech
- 19 usually goes through once a day to check it. It was usually
- 20 the third shift lab tech.
- 21 Q Okay. All right. Does Mr. Lim go anywhere else in the --
- 22 where Exhibit 1 is?
- 23 A He will go to the terminal area also with the rabbi,
- 24 because we have new tanks that are specific to --
- 25 Q Uh-huh.

- 1 A -- non-kosher product.
- 2 Q Okay. Does he ever go through the put away area?
- 3 A He will walk along to the shipping area, because there's
- 4 also a master sanitation schedule there as well, so -- to get
- 5 there, you have to walk through the entire warehouse area.
- 6 Q So he will go through this long building from 16 to nine,
- 7 to 10 to 11. Is that what you're saying?
- 8 A All the way to 18.
- 9 Q Okay. Follow his route by number, if you can, so the
- 10 record's clear.
- 11 A So he would originate from 15.
- 12 Q Correct.
- 13 A Go through -- there's a door where 16 shows --
- 14 Q Right.
- 15 A -- to get to shipping, he'd probably walk along the wall
- 16 here where 16 is, cut across where the number 10s are --
- 17 Q Okay.
- 18 A -- because it -- that's kind of where the finished good
- 19 area begins. So there's an area where you can walk through.
- 20 Then walk along the wall here by 18 and then go into the
- 21 shipping office.
- 22 Q And the shipping office is where?
- 23 A Where the number 18 is.
- 24 Q Okay. All right. So will he go down to 11? Or will he
- 25 cut across where area 10 is? That's what I'm asking.

1 A He would probably cut across area 10. Because if he would
2 go this way, it's not safe, because of all the forklift --

3 Q Okay, now --

4 A -- traffic.

5 Q -- when you say this way, remember, the record can't pick
6 that up so --

7 A Oh, I apologize. He would walk through the 10.

8 Q So he's not going to go from 10 to 11. He's going to go
9 from 10 to 10 to 10 and then over to 18.

10 A Yes.

11 Q Okay. Just want to make sure the record's clear. Okay.

12 And that would -- for the record. If you're looking at Exhibit
13 1, the 10 to 10 to 10 would be from right to left, correct?

14 A Yes.

15 Q Okay. All right. Does he have any other occasions that
16 you're aware of to go around into any areas, where the packing,
17 shipping and receiving are?

18 A He often attends the 10:00 a.m. production meeting, which
19 is in the packaging conference room.

20 Q Okay. And where is the packaging conference room?

21 A It's where the number 16 is located on this.

22 Q Okay. Who else attends that 10:00 a.m. production
23 meeting?

24 A Usually -- depending on what everyone's up to, it's
25 usually someone from maintenance. Usually Dan Sparks, myself,

1 Jesus Valadez, the plant manager, Darren Meade, the operations
2 leader, Carlos Alban, purchasing and Lorraine Camacho from
3 receiving.

4 Q Okay. All right. Okay, let's talk about Jason Duong now.
5 What shift does he usually work?

6 A So he's on first shift right now.

7 Q Okay. And first shift generally is from when to when?

8 A He is, I believe, on like a 9:00 to 6:00 shift.

9 Q Okay. Okay. And what does he do?

10 A So he's a lab tech, so he will do analysis.

11 Q Okay. And he does analysis of what?

12 A Of oil.

13 Q Okay. And who brings him the oil?

14 A Operators from different areas, depending on what has
15 happened with the oil, what movement's been done. If it's a
16 bulk movement, he'll bring a bulk movement. If it's a package,
17 it'll be a package sample. If it's a votated --

18 Q Okay, so if it's a bulk movement, the sample's coming from
19 six to 15, correct?

20 A If it's a bulk load out, yes.

21 Q Right. If it's a packaging sample, where does that come
22 from?

23 A So it -- before we pack, we'll get a tank sample from
24 five.

25 Q Correct.

- 1 A So that will go --
- 2 Q And who brings that tank sample over?
- 3 A The lead.
- 4 Q Okay. The lead from packaging?
- 5 A Yes.
- 6 Q Okay.
- 7 A So he'll go into that tank area there to get the tank
- 8 sample, take that to the lab. So that would be for a
- 9 changeover for the next product we're going to run --
- 10 Q Okay.
- 11 A -- as they prep. And then there are also line samples
- 12 taken from the lines to the lab.
- 13 Q And where -- and the line samples taken from the labs are
- 14 from what point on this diagram to what point?
- 15 A Number nine of the building to number 15.
- 16 Q Okay. Now who physically carries those samples from
- 17 number nine over to number 15?
- 18 A The lead usually does.
- 19 Q Okay. Anybody else do it?
- 20 A The reliever --
- 21 Q Okay.
- 22 A -- as well.
- 23 Q Okay. Anybody else?
- 24 A On occasion, an operator has.
- 25 Q Okay. So anyone of the people in the packaging, the lead,

1 the reliever or the operator takes samples to the lab?

2 A Yes.

3 Q And that's -- just to make sure the record's clear --

4 MR. CANTORE: Objection. I know this is an evidentiary,
5 but, you know, I'd like to keep a record here. And the witness
6 just testified occasionally. And counsel's now asking her if
7 all three groups take them over. The leads, the temp leads and
8 the operators. And her answer originally for the operators was
9 occasionally.

10 MR. TOPOLSKI: And the record says that. That's fine.

11 HEARING OFFICER MEZA: Okay.

12 MR. CANTORE: Yeah.

13 HEARING OFFICER MEZA: Okay. All right. Thank you.

14 Q BY MR. TOPOLSKI: Okay, now, so Mr. Duong, does he receive
15 those samples from all three of those groups?

16 A Yes.

17 Q Okay. And what does he do with the samples?

18 A He analyzes the samples.

19 Q Uh-huh.

20 A And then he will release tanks for packaging.

21 Q Does he receive samples from anybody else?

22 A Not anyone I can think of offhand.

23 Q All right. What about people from area eight?

24 A Oh yeah, votation.

25 Q Okay. And what happens then?

1 A Well, the votator operators will actually take their own
2 samples to the lab to check the viscosity as they're running
3 the project to insure that they're running it in spec.

4 Q Okay. And when a votator lab takes -- when a votator
5 operator takes a sample to the lab, that goes from what area to
6 what area?

7 A So if they're doing their own, it'll go from five.
8 They'll take the tank sample, when it's done, because it's a
9 process.

10 Q Who's they?

11 A I'm sorry. The votator operator.

12 Q Right.

13 A There's an origin tank in five.

14 Q Uh-huh.

15 A It'll go through the chilling process and it'll go back to
16 a destination tank in five. So once it's done, the tank sample
17 will come from five to 15.

18 Q Okay. Now, the votator operator, to get to the tank
19 sample at number five walks from where to where?

20 A From eight out of the building into the tank farm area to
21 get the tank sample and then takes that to 15.

22 Q Okay. So the pad for a sample from the votator operator
23 -- I just want to make sure the record's clear -- is eight to
24 five to 15? Is that right?

25 A Yes.

1 Q Okay. Does Mr. Duong ever leave building 14 to do any
2 part of his job?

3 A To -- yes, he leave building -- is the lab.

4 Q I'm sorry. Does he ever leave building 15?

5 A Yes.

6 Q And when and where does he do that?

7 A So he will also come into packaging with the transition
8 and the other line, the new like that we're running. He comes
9 to check on those as well.

10 Q Okay. Now, when you say he comes into packaging. Again,
11 so the record's clear, he's going from 15 to nine?

12 A Yes.

13 Q And what does he do when he gets to nine?

14 A So he is checking on our status for our transition for our
15 new non-kosher line. So he's checking on that. And then
16 previously, we were starting up another line and he was
17 checking on that as well.

18 Q Okay. And that's the only line, right?

19 A Yes.

20 Q And how often does he do that?

21 A He does that -- I would guess I see him maybe once a week.

22 Q Okay.

23 HEARING OFFICER MEZA: And just for the record. The
24 rotator operator.

25 MR. TOPOLSKI: We're going to talk --

1 HEARING OFFICER MEZA: This is --

2 MR. TOPOLSKI: -- about them in detail.

3 HEARING OFFICER MEZA: Okay. All right. But is this a

4 quality control employee or what is --

5 MR. TOPOLSKI: No, that's a packaging employee.

6 HEARING OFFICER MEZA: Oh, okay. All right.

7 MR. TOPOLSKI: And it's a votator with a V.

8 HEARING OFFICER MEZA: Oh, votator.

9 MR. TOPOLSKI: Yes.

10 HEARING OFFICER MEZA: Okay. And we're going to talk --

11 MR. CANTORE: Thank you. I thought it was rotator, too.

12 HEARING OFFICER MEZA: Okay.

13 MR. CANTORE: As in a cuff.

14 HEARING OFFICER MEZA: Okay. All right.

15 MR. TOPOLSKI: It's a unique operation, so --

16 HEARING OFFICER MEZA: Yeah.

17 MR. CANTORE: After doing this for almost 40 years, it's

18 amazing how many different industries I have now learned.

19 MR. TOPOLSKI: You know, I'd say it's the best part about

20 this job.

21 MR. CANTORE: Yeah.

22 MR. TOPOLSKI: You get to see so many things and how

23 they're made and done, I'll tell you.

24 MR. CANTORE: Have you ever seen a corrugator?

25 MR. TOPOLSKI: Yeah. Have you ever seen a C17 built?

1 MR. CANTORE: Yes.

2 MR. TOPOLSKI: Right up the street. But we digress, so ---

3 MR. CANTORE: Yes.

4 Q BY MR. TOPOLSKI: Okay -- so I just want to make sure

5 we've covered everybody. We've talked about Mr. Duong. He'll

6 receive samples from the votator operators, correct?

7 A Yes.

8 Q And who else, just to be clear?

9 A From the packaging department from --

10 Q Yes.

11 A -- leads or relievers. Bulk area unload and load out --

12 Q Okay.

13 A -- and transfers.

14 Q Okay. All right. Okay, who's the next person we want to

15 talk about? What about Gago Bullus?

16 A He's a lab tech on third shift.

17 Q Okay. And what does he do?

18 A He does analysis on samples.

19 Q Okay. So does he do in third shift pretty much what Mr.

20 Duong does on first shift?

21 A Yes. Basically the same.

22 Q Okay. From where does he get his samples?

23 A He gets his samples from the same areas.

24 Q And then what would they be in?

25 A They would be from the rail, from --

- 1 Q And the rail would be area where?
- 2 A Area one.
- 3 Q Okay.
- 4 A From the tank farm area, which is four, three and five
- 5 over from packaging in nine.
- 6 Q Okay. What about area eight?
- 7 A And area eight.
- 8 Q And where -- what's in area eight again?
- 9 A The votation.
- 10 Q Okay. Anyplace else he would get samples from?
- 11 A There is a chance that we would get a finished goods
- 12 sample to the lab, if they requested one. So that --
- 13 Q And where does that come from?
- 14 A That would come from the 10 area. So if there was
- 15 something -- they wanted a jib or a cube for further analysis.
- 16 Q Who would bring that sample to him?
- 17 A The lead would probably bring that to him.
- 18 Q Okay. Would Mr. Gagos (sic) ever have the opportunity to
- 19 go out and get one of those himself?
- 20 A He could, if he wanted to, but --
- 21 Q Okay.
- 22 HEARING OFFICER MEZA: And generally what hours does he
- 23 work exactly? You said it was third shift, but what hours
- 24 generally are those?
- 25 THE WITNESS: It's about 6:00 p.m. till like 3:00 a.m.

- 1 HEARING OFFICER MEZA: Okay. Okay. Thank you.
- 2 Q BY MR. TOPOLSKI: Okay. One more person. What does
3 Amanda Moss do?
- 4 A She's a lab tech.
- 5 Q Okay. And what shift does she work?
- 6 A She's first shift.
- 7 Q About what are her hours, about?
- 8 A About 3:00 a.m. to noon.
- 9 Q Okay. And where -- does she do the same thing that Mr.
10 Duong does?
- 11 A She does the same thing. She just recently returned. She
12 was a super user also for the deployment of the SAP project.
- 13 Q Okay. And what's a super user mean?
- 14 A So super users were trained initially so that we could
15 come back and train and help with the deployment.
- 16 Q Okay. How long was she gone?
- 17 A I believe nine months.
- 18 Q Okay. And what does she do now exactly?
- 19 A She is a lab tech, but she's still helping with questions
20 and stuff.
- 21 Q Okay. And from where does she get her samples?
- 22 A She gets her samples from one, from two, from six, from
23 the tank farm areas, for -- when transfers are done. She'll
24 get them from nine and votation as well.
- 25 Q Which is eight.

1 A Yes.

2 Q Okay. Other than the supervisor position, are you aware
3 of any openings in quality at this time?

4 A No.

5 Q Okay. So we've tracked the oil from the rail cars and the
6 sampling. And then from there, it goes into the packaging
7 area, correct?

8 A Yes.

9 Q With some exceptions and --

10 A If it's not going to be --

11 Q -- some detours.

12 A -- packed then yeah.

13 Q So I think the next thing we want to talk about is the
14 packaging department, all right? We've mentioned lines in the
15 packaging department. And we know that there -- the lines are
16 located around area marked number nine on Exhibit 1, correct?

17 A Yeah, the actual production lines, yes.

18 Q Right. Can you tell me what production lines are located
19 there?

20 A There's a five quart line, there -- which is a bottling
21 line, a bottle line.

22 Q Okay.

23 A There's a jib line, which is a 35 pound jib, which is a
24 plastic jug in a box.

25 Q It's like a wine in a box thing, only bigger?

- 1 A Yeah, significant bigger.
- 2 Q All right. Yeah, okay.
- 3 A There's a 50 pound cube line, which is shortening that is
- 4 filled into a plastic bag and it's boxed. And then there's the
- 5 ole line.
- 6 Q Okay now, what -- just -- what is the ole line, just so
- 7 we're clear on it?
- 8 A It's bottle line. It --
- 9 Q It's a unique kind of bottle line, though, right?
- 10 A Yes.
- 11 Q Okay.
- 12 A We also run drums and totes as well. But it's shared with
- 13 35 pound line, so depending on what we're running on the 35
- 14 pound line, we can either run a different type of oil to run
- 15 the drums or totes or we have to not run the 35 pound line.
- 16 Q Okay. Now, if the oil's not going out in a bulk truck at
- 17 number six, does all the other oil go through nine before it's
- 18 put away and shipped?
- 19 A Yeah, if it's a packaged, oil, yes, it --
- 20 Q Okay. And they run how many shifts in packaging?
- 21 A There -- the five quart line runs three shifts. The other
- 22 -- the 35 and the 50 pound line, there are two shifts, but
- 23 we're running almost the mount of three shifts with those two
- 24 shifts.
- 25 Q Okay. Let's go over these folks real -- as fast as we

1 can, so we can get everybody done. Let's start with the first
2 shift. Alvaro Alcala. What does he do?

3 A He's on first shift. He's currently the box maker
4 operator.

5 Q Okay. Gerardo Carranza. What does he do?

6 A He's on first shift. He's a reliever.

7 Q Okay. Tell us what a reliever does.

8 A So a reliever -- the idea of the reliever is that they are
9 able to relieve any area on the line. So if somebody's on
10 vacation or sick, we would seamlessly be running still.

11 Q Okay.

12 A So he can do forklift. He can do the filler operator. He
13 can do the Depal. He can relieve the lead.

14 Q Does he do put away?

15 A Yes.

16 MR. CANTORE: Could we have a definition of that term?

17 MR. TOPOLSKI: Put away?

18 MR. CANTORE: Yeah.

19 MR. TOPOLSKI: We're going to get to that. That's the --
20 that's essentially the -- let's make the record clear. Put
21 away are the forklift driver who move stuff from the packaging
22 area to the warehouse area.

23 MR. CANTORE: To the storage area.

24 MR. TOPOLSKI: Right.

25 MR. CANTORE: Okay. That's what I thought, but I --

1 MR. TOPOLSKI: It's their --

2 MR. CANTORE: -- wanted the record to be clear.

3 MR. TOPOLSKI: It's their unique term for it. You should
4 have every right to voir dire on that. I -- that's all I can
5 say. Because I did some of my own voir diring on that.

6 Q BY MR. TOPOLSKI: Okay. Nicholas Craft. What does Mr.
7 Craft do?

8 A He's an ole technician, line technician.

9 Q Okay. And he -- what does an ole technician do?

10 A So, he runs the ole line, which is our bottling line.

11 Q Uh-huh.

12 A It's a -- we're currently running one gallons on it.

13 Q Okay. And does he go anywhere besides area number nine?

14 A He will take samples from the ole line to the lab.

15 Q Okay. And when you say from the ole line to the lab, from
16 where to where in Exhibit 1 is that?

17 A Nine to 15.

18 Q Okay. Okay, what about Kimberly Cruz. What does she do?

19 A She is with engineering.

20 Q And where does she work? What area of the plant?

21 A She offices out of building 14, but with all the different
22 projects we have going on, she could be in any area of the
23 entire facility.

24 Q Okay. What did she do before she worked in building 14?

25 A She was a lab tech.

1 Q And where did she work then?

2 A In building 15.

3 Q Okay. How often does she go into the area marked by

4 Exhibit eight, nine, 16, 10, et cetera?

5 A She's usually in their daily. There's projects going on

6 in every area. So she does a lot of the permits orientations

7 and the startup of the day to day with all the contractors.

8 Q Okay.

9 HEARING OFFICER MEZA: Okay. I just have to interject for
10 a second. Whenever, you know, the witness is asked what the
11 individual does, we need more than just what the title is. We
12 need to actually know what that person does. So I think it's
13 happened a couple of times and she said engineering --

14 MR. TOPOLSKI: I -- okay.

15 HEARING OFFICER MEZA: -- she said engineering and then
16 didn't actually say what the person did, you know, so --

17 MR. TOPOLSKI: Yeah, I thought she just explained that.

18 HEARING OFFICER MEZA: Yeah.

19 Q BY MR. TOPOLSKI: You talked about --

20 HEARING OFFICER MEZA: Okay.

21 Q BY MR. TOPOLSKI: Ms. Cruz deals with permits and
22 paperwork and that kind of stuff, correct?

23 A Yes.

24 HEARING OFFICER MEZA: Okay. All right. I just wanted
25 to --

1 Q BY MR. TOPOLSKI: Give us a little more detail.

2 HEARING OFFICER MEZA: Yeah.

3 Q BY MR. TOPOLSKI: A little more detail for the Hearing --

4 HEARING OFFICER MEZA: Right. More than the title.

5 Q BY MR. TOPOLSKI: -- Examiner. Exactly what does she do

6 and what does she do and what takes her from building 14 to

7 areas in eight, nine and 10?

8 A So she'll do permits. So if they're doing welding or

9 cutting or any of that, she'll do that. She'll sniff the area,

10 which we call -- it's a sniffer. For -- before we do any

11 welding, you have to test the air to insure that there's

12 nothing that'll create a spark or an ignition. She'll fill out

13 those permits. She'll open doors and gates and different

14 things throughout the area just for the startup of whatever the

15 contractors are working on.

16 MR. TOPOLSKI: Is that better?

17 HEARING OFFICER MEZA: Uh-huh. Yeah. And just for every

18 employee.

19 MR. TOPOLSKI: Sure.

20 HEARING OFFICER MEZA: Just the same. Thank you.

21 Q BY MR. TOPOLSKI: Tiari Moore.

22 A He is an ole line technician, which is the bottling line

23 that we currently run gallons off of.

24 Q Okay. And he's essentially a machine operator, correct?

25 A He's a -- yeah, he runs the ole line. He's a technician

1 for the ole line.

2 Q Okay. And what does that entail? Give you -- just give a
3 little bit more detail?

4 HEARING OFFICER MEZA: Uh-huh.

5 THE WITNESS: We run the bottles off of it. So I just --
6 and he keeps the equipment running. I guess just for
7 proprietary -- I'm not sure how much I can say on the actual
8 line --

9 MR. TOPOLSKI: That's -- it's a proprietary system.

10 HEARING OFFICER MEZA: Okay.

11 MR. TOPOLSKI: All right.

12 HEARING OFFICER MEZA: Okay.

13 MR. TOPOLSKI: And with -- at the risk of testifying for
14 the witness --

15 HEARING OFFICER MEZA: Okay.

16 MR. TOPOLSKI: -- it's a special way to bottle product.

17 HEARING OFFICER MEZA: Okay.

18 MR. TOPOLSKI: And he has a unique understand of that
19 particular machine.

20 HEARING OFFICER MEZA: Okay.

21 MR. TOPOLSKI: And that's what makes him different than
22 some of the other operators.

23 HEARING OFFICER MEZA: Okay, so he --

24 MR. TOPOLSKI: And every ole -- there are three ole techs
25 right not and that's what they do?

1 HEARING OFFICER MEZA: Only? How --

2 MR. TOPOLSKI: O-L-E.

3 THE WITNESS: O-L-E.

4 MR. TOPOLSKI: Is what they're called.

5 HEARING OFFICER MEZA: O-L-E?

6 MR. TOPOLSKI: Right.

7 HEARING OFFICER MEZA: Okay. And is that an acronym?

8 MR. TOPOLSKI: It's a code name.

9 HEARING OFFICER MEZA: Okay. Ole, O-L-E. Okay.

10 MR. TOPOLSKI: Right.

11 MR. CANTORE: Part of the secret?

12 MR. TOPOLSKI: Yes.

13 HEARING OFFICER MEZA: Ole line. Okay. I was wondering

14 what you were saying.

15 MR. TOPOLSKI: We could get testimony on that, but they --

16 HEARING OFFICER MEZA: Okay. Go ahead.

17 MR. TOPOLSKI: -- that may involve killing people, and we

18 don't want to go there.

19 HEARING OFFICER MEZA: Okay. All right.

20 Q BY MR. TOPOLSKI: Does Mr. Moore interact with quality

21 people?

22 A When quality comes to the line, yes.

23 Q And when does quality come to the line and how does he

24 interact with them?

25 A They come to the line when it's running, because it's just

1 -- it just started. We're just a few days in. So they'll just
2 verify that these are running and have, you know,
3 conversations.

4 Q So somebody from 15 will go over to number nine?

5 A Yes.

6 Q Who is that somebody generally?

7 A Generally it's Steve Lim.

8 Q Okay. And who does he interact with there?

9 A The technicians on the line.

10 Q Okay. And what kinds of interactions are they?

11 A Right now, they're kind of more questions, because it's
12 new and shiny equipment that a lot of people aren't familiar
13 with.

14 Q How's it running and that kind of stuff?

15 A Yeah. What is that doing type of thing.

16 Q Okay. Edward Mulvey. What does he do?

17 A He feeds the 35 pound depalletizer.

18 Q And what shift is he on?

19 A He's on first shift.

20 Q And he generally works what hours?

21 A He generally -- right now, he's working from like 4:00 to
22 3:00.

23 Q And when you see he feeds the depalletizer, what does that
24 mean?

25 A So we receive our jibs empty and they're on a pallet

- 1 already.
- 2 Q Now, the jibs are the big boxes, right?
- 3 A They're a jug in a box. Sorry.
- 4 Q Right.
- 5 A So that now has to be depalletized so it can run on the
- 6 conveyer to the filler. So he --
- 7 Q So he unloads pallets and fills machines, correct?
- 8 A Yes.
- 9 Q Okay. Cesar Perez?
- 10 A Cesar Perez is the 35 pound put away for first shift.
- 11 Q And exactly what does he do to put away?
- 12 A So what we call put away is once it comes off the line and
- 13 it's been depalletized, stretch wrapped and is ready to go,
- 14 it's taken off the conveyer and it's put into the finished
- 15 goods area of the warehouse.
- 16 Q And what does he use to put --
- 17 A A forklift.
- 18 Q Okay. Right. He's a forklift driver.
- 19 A He's a forklift driver. He's also -- can do the votation
- 20 as well.
- 21 Q Okay. So what areas in this diagram does he generally
- 22 work in?
- 23 A He's generally in nine.
- 24 Q Uh-huh.
- 25 A Currently, he's covering for a vacation in votation, so he

- 1 is in eight --
- 2 Q Okay.
- 3 A -- during this time.
- 4 Q And he would also go to number 10, which is the put away
- 5 area, correct?
- 6 A Yes. He would drive into 10 to put away and then come
- 7 back.
- 8 Q Does he ever have any occasion to work in any other areas?
- 9 A Yeah. He could -- he can run the filler. He can do the
- 10 Depal.
- 11 Q Does he do forklift driving for anybody else?
- 12 A Not usually.
- 13 Q All right. So he would not help with shipping or
- 14 receiving or anything like that.
- 15 A I don't believe he has before.
- 16 Q Okay. What about Mr. Pina?
- 17 A Arnulfo Pina. He is the put away for the five court or
- 18 the ole line. Both lines. They cannot run at the same time,
- 19 so that same forklift operator will put away for each line.
- 20 Q Okay. Does he ever work in any other areas of the plant?
- 21 A He's helped with receiving before for unloads.
- 22 Q And receiving is where?
- 23 A Number 12.
- 24 Q Okay. What about Israel Ramirez?
- 25 A He's a 35 pound filler operator for first shift.

1 Q Okay. And what does that entail?

2 A So he's on the actual line where the filling is occurring
3 on those jug in a boxes. So he monitors the equipment.

4 Q Okay. And he works in area nine?

5 A Yes, he does.

6 Q Does he have occasion to go anywhere else on Exhibit 1?

7 A Not too much, because the demand of the equipment keeps
8 him right there on the line.

9 Q Does anybody from any other area of Exhibit 1 go see him?

10 A The put away will go in and talk to him or the lead will
11 go in and talk to him. And sometimes the lab techs that are
12 walking through will go through that area.

13 Q Okay. So the people from what, 15?

14 A Yes.

15 Q Okay. What about Guadalupe Sanchez?

16 A He's the second shift -- excuse me -- 35 pound put away.

17 Q Okay. So what does he do exactly?

18 A So he would take the finished good material off the line
19 and put it away in the warehouse area.

20 Q But he's a forklift driver moving stuff from nine to 10.

21 A Yes.

22 HEARING OFFICER MEZA: Okay. And just so that we have it
23 on the record, you said the word palletizer or palletizing,
24 something like that. That literally means to put product on a
25 pallet, correct?

1 THE WITNESS: Yes.

2 HEARING OFFICER MEZA: Okay. And then depalletize, to
3 take --

4 THE WITNESS: It actually --

5 HEARING OFFICER MEZA: -- product off the pallet.

6 THE WITNESS: Yeah, it takes it off.

7 HEARING OFFICER MEZA: Okay.

8 THE WITNESS: Uh-huh.

9 HEARING OFFICER MEZA: So that's clear.

10 MR. CANTORE: Well, it's not usually product you're taking
11 off the pallet. It's generally --

12 HEARING OFFICER MEZA: Okay.

13 MR. CANTORE: -- empty bottles or empty boxes --

14 HEARING OFFICER MEZA: Okay.

15 MR. CANTORE: -- correct?

16 THE WITNESS: Yes.

17 HEARING OFFICER MEZA: Okay. Okay. Just so that it's
18 clear on the record what that term is.

19 Q BY MR. TOPOLSKI: And what -- the palletizer does other
20 stuff besides -- what would the palletizer do? Just for the
21 record.

22 A So the palletizer, it takes the jibs and stacks them onto
23 the thing and then it slides. And then it shrink wraps it --

24 Q All right.

25 A -- and then it continues off the conveyor.

1 Q It puts a shrink wrap around it, too, to make them safer
2 to ship. Okay. Okay. What about -- all right. Let's talk
3 about --

4 MR. CANTORE: Are you talking about something new? Matter
5 of personal privilege?

6 MR. TOPOLSKI: Sure.

7 MR. CANTORE: I'm an old man. Got to use the men's room.

8 HEARING OFFICER MEZA: Oh, okay.

9 MR. TOPOLSKI: Want to take a two minute fire break?

10 HEARING OFFICER MEZA: Okay. Yeah, let's go ahead --

11 MR. TOPOLSKI: It's a good time to stop.

12 HEARING OFFICER MEZA: -- and go off the record.

13 (Off the record at 10:27 a.m.)

14 HEARING OFFICER MEZA: Okay. And I propose -- are we on
15 the record? Okay. So I'm just going to go ahead and state a
16 correction with respect to the Board's exhibit and the receipt
17 of the formal papers. So I'll just go ahead and just go
18 through this again.

19 I now propose to receive the formal papers. They have
20 been marked as Board's Exhibit 1(a) through 1(f), inclusive,
21 1(f) being an index and description of the entire exhibit. The
22 exhibit has already been shown to all parties. Are there any
23 objections to receiving the Board's exhibit into evidence?

24 MR. CANTORE: No objection, but I would suggest that you
25 strike Board Exhibit 1(g) at the bottom of the exhibit.

1 HEARING OFFICER MEZA: Okay. It's duly noted. Is there
2 any objection, Mr. Topolski?

3 MR. TOPOLSKI: No. With the --

4 HEARING OFFICER MEZA: Okay.

5 MR. TOPOLSKI: -- correction, I think we're finally okay.

6 HEARING OFFICER MEZA: Okay. Hearing no objections,
7 formal papers are received into evidence.

8 **(Board Exhibit Number 1(a) through 1(f) Received into Evidence)**

9 HEARING OFFICER MEZA: Okay. So let's go ahead and
10 continue with Ms. Puig. And Mr. Topolski, you may continue.

11 MR. TOPOLSKI: Okay. Thank you.

12 Q BY MR. TOPOLSKI: We started to talk about Jaime Sedano.
13 What does he do?

14 A He's on first shift. He's a lead.

15 Q Okay. Now what exactly does a first shift lead -- a first
16 shift packaging lead, correct?

17 A Yes.

18 Q Okay. What does -- well, what does he do?

19 A So he monitors the schedule for the three lines and he
20 takes the tank samples that we referred to earlier.

21 Q Okay. He takes tank samples from where to where?

22 A From the tank farm number five to 15.

23 Q Okay. Where's his primary work area?

24 A Nine.

25 Q Okay. So he'll go from nine to five to 15?

- 1 A Yes.
- 2 Q Okay. What else does he do?
- 3 A He does -- with the new deployment, there's more computer
4 stuff that he has to do. So he verifies the issues of raw
5 material and oil. He'll make what we call an order current in
6 the system, so that it can be ran. And then he closes them out
7 when -- once they have been ran.
- 8 Q Okay. Does he do any time on the machines?
- 9 A He can cover, yes. He can --
- 10 Q Does he cover?
- 11 A Yes.
- 12 Q Okay. Does he do anything else?
- 13 A He'll take line samples. That's all I can think of
14 offhand.
- 15 Q Okay. What about James West? What does he do?
- 16 A He's an ole line technician.
- 17 Q Okay. So he would do the same thing as --
- 18 A As Tiari and Nicholas.
- 19 Q Okay. Does he do anything different?
- 20 A No.
- 21 Q Okay. What about Andres Solano?
- 22 A He's a first shift votator operator.
- 23 Q Okay. Now we get to votator operators. Tell us -- first
24 of all, he -- so he works in area number eight, correct?
- 25 A Yes.

1 Q All right. Now is there such a thing called a votator?

2 A Yes.

3 Q And what is it?

4 A It chills the oil. It's like a heat exchanger and it
5 chills the oil, so that it changes the viscosity, so it's a
6 thicker oil.

7 Q Okay. And what does he do?

8 A So the oil comes from an origin tank in the tank farm of
9 five.

10 Q Okay.

11 A So he brings it over through his equipment in eight.

12 Q Now, when you say he brings it over, I mean, what does he
13 do? He doesn't physically carry it, right?

14 A No, there are pumps.

15 Q Right, so he --

16 A He use --

17 Q -- turns valves, knobs, that kind of thing?

18 A Yeah.

19 Q Okay.

20 A So the oil is pumped through into the votation room. Then
21 it comes back out into a destination tank, now a chilled
22 product.

23 Q Okay. And then what else does he do?

24 A So, during the process, he will check the viscosity to
25 ensure that he's got to the right viscosity. And he does that

1 in the lab. Once --

2 Q Now, when you say -- stop right there. You say he's --
3 checks viscosity and does that in the lab. How does he do that
4 exactly?

5 A He puts it like in a glass beaker and there's a viscosity
6 machine that -- I mean, I'm not -- I don't know how to run the
7 machine, but he puts it in there. And there's some sort of
8 mixing goes on and it gives you a viscosity number.

9 Q Okay. But does he take anything from eight to 15?

10 A He goes from eight to five to 15.

11 Q Okay. And how often does he do that?

12 A So when he -- when the startup -- he'll have to go to five
13 to startup. And then during the process, to insure that the
14 viscosity's correct. And then once the tank is done, he'll
15 take a tank sample to the lab from five.

16 Q From five to where?

17 A To 15.

18 Q Okay. And how often does he do that?

19 A It's dependent upon the schedule. So if there's one item
20 that he's votating that day, he'll do it for that one. If
21 there's a few things, then it'll be done more often.

22 Q Okay. So is it fair to say at least once a day?

23 A Yes.

24 HEARING OFFICER MEZA: Now, is the votator a machine?

25 THE WITNESS: Yes, it is.

- 1 HEARING OFFICER MEZA: Okay.
- 2 Q BY MR. TOPOLSKI: Does he ever talk to anybody by phone?
- 3 A He does in the production office. He'll talk to the lab
- 4 or he can talk to the terminal.
- 5 Q Who would he talk to at the terminal by phone?
- 6 A The loader would contact him, if we were waiting on oil
- 7 that was needing to be votated for bulk load out. So the oil
- 8 that's votated can either be packed or it goes in bulk --
- 9 Q Okay.
- 10 A -- load out.
- 11 Q Would the loaders be people that the Union wants in its
- 12 voting unit?
- 13 A I don't believe they are.
- 14 Q Would they be people that we want in the voting unit?
- 15 A Yes.
- 16 Q And who would they be?
- 17 A They would be the terminal operators.
- 18 Q And do you know by name?
- 19 A Yeah. They're Ernesto, Mike, Roman -- do you want to name
- 20 them all? Jonathan, Cervando, Mike, Daniel, Ernesto, Roman and
- 21 Daniel and Jaimar.
- 22 Q Okay. Any of those people would be contacted by phone by
- 23 a votator operator from time to time?
- 24 A Yes.
- 25 Q Okay. Maurice Alvarez. What does he do?

- 1 A Mauricio?
- 2 Q Mauricio. I'm sorry. Correct.
- 3 A He's a second shift 35 pound filler operator.
- 4 Q Okay. So he's go the same job as Israel Rodriguez?
- 5 A Yes.
- 6 Q Okay. What about Erika Medina?
- 7 A Israel Ramirez, but yes.
- 8 Q I'm sorry?
- 9 A It's Israel Ramirez. Sorry.
- 10 Q Ramirez. I'm sorry. Right. Hard to call that a typo.
- 11 Erika Medina?
- 12 A She's a five court filler operator.
- 13 Q Okay. What shift?
- 14 A Second shift.
- 15 Q All right. Okay. And her job would be similar to who on
- 16 first shift?
- 17 A It's -- she operates the fillers for a five quart. So
- 18 it's comparable. It's similar to a 35 pound filler. It's a --
- 19 Q Okay. What --
- 20 A -- the equipment fills bottles.
- 21 Q Okay. What are the differences?
- 22 A This -- the five quart line only salad oils. There's no
- 23 creamy oils on the line. That line is very manual. The
- 24 loading -- it doesn't have like a depalletizer or a palletizer,
- 25 the same way as the 35 pound line does.

1 Q Okay. And --

2 HEARING OFFICER MEZA: And just so it's clear, the fillers
3 are -- that's a machine?

4 THE WITNESS: Yes.

5 HEARING OFFICER MEZA: A filler machine? Okay. All
6 right. Thank you.

7 MR. TOPOLSKI: And she's a machine operator.

8 Q BY MR. TOPOLSKI: Julio Munoz?

9 A He's the second shift votator operator.

10 Q Does anything he do -- does anything that he does on
11 second shift, is there anything different than the other
12 votator operator we spoke about?

13 A No.

14 Q Would Mr. Munoz move from eight to five to 15 in the same
15 way as the other votator operator?

16 A Yes.

17 Q On as regular a basis?

18 A Yeah. It's the same process.

19 Q Okay. Would he also talk to people in the terminal area
20 by phone?

21 A He would. He probably wouldn't as much as Andreas,
22 because his shift -- we're not loading trucks as often or
23 moving as often. But he would.

24 Q Okay.

25 A If --

- 1 Q Rafael Rodriquez?
- 2 A He's the second shift lead, packaging lead.
- 3 Q What does he do?
- 4 A He performs the same job as Jaime Sedano.
- 5 Q Okay. And -- okay. Second shift. We talked about that.
- 6 What about David Santacruz?
- 7 A He's a second shift reliever.
- 8 Q And what does the reliever do?
- 9 A They relieve the different positions --
- 10 Q Is -- he does the same thing as --
- 11 A Normally --
- 12 Q -- Gerardo?
- 13 A -- he does do the same thing. Currently he's on a
- 14 modified duty, so he's not --
- 15 Q Okay. And --
- 16 HEARING OFFICER MEZA: Which individual are we on right
- 17 now? I'm sorry to interrupt.
- 18 MR. TOPOLSKI: This is David Santacruz.
- 19 HEARING OFFICER MEZA: Okay. Thank you.
- 20 Q BY MR. TOPOLSKI: He's a second shift reliever, correct?
- 21 A Yes.
- 22 HEARING OFFICER MEZA: Okay.
- 23 Q BY MR. TOPOLSKI: Does he have -- when he's not on light
- 24 duty, does he do the same thing on the second shift that Mr. --
- 25 what's --

- 1 A Gerardo --
- 2 Q Yeah.
- 3 A -- Carranza. Yes.
- 4 Q Okay.
- 5 A It's the same function.
- 6 Q What about Luis Contreras-Zepeda? What does he do?
- 7 A He's on third shift sanitation.
- 8 Q Uh-huh.
- 9 A So he cleans the equipment. And he also helps on five
- 10 quart line, if we're short a person and the 50 pound box maker.
- 11 Q Okay. Does he have any occasions to interact with anybody
- 12 from building 15?
- 13 A No.
- 14 Q Okay. What about Brandon Nubia?
- 15 A He's put away for third shift on the five court line.
- 16 Q Okay. And so he works in what areas?
- 17 A In the production nine.
- 18 Q Okay. And he would put away in 10, correct?
- 19 A Yes.
- 20 Q All right. And Luis Zepeda.
- 21 HEARING OFFICER MEZA: Wait. Going back to Brandon Nubia.
- 22 The put away. What does he put away?
- 23 THE WITNESS: He puts away for the five quart line. So
- 24 the finished goods. Once it's been palletized --
- 25 HEARING OFFICER MEZA: Okay.

1 THE WITNESS: -- he takes it to the finished goods area.

2 HEARING OFFICER MEZA: All right. Thank you.

3 Q BY MR. TOPOLSKI: Now, what areas of the plan does --
4 let's go back to Zepeda for just a minute, because I don't
5 think the record's clear on this. What area of that plant does
6 Luis Contreras-Zepeda work?

7 A In number nine, the production lines.

8 Q Okay. Does he work in any other area of the plant?

9 A No.

10 Q Okay. Okay. Allan Perez.

11 A He's the third shift five quart filler operator.

12 Q Okay. And his job would be similar to who?

13 A Erika Medina.

14 Q Okay. And differences between what the two of them do?

15 A Allan also comes in early and helps cover for put away.

16 Q Okay. I don't think there's anybody we haven't talked
17 about.

18 HEARING OFFICER MEZA: Did we cover Ramiro Perez?

19 MR. TOPOLSKI: That's the one I'm missing.

20 HEARING OFFICER MEZA: Okay.

21 Q BY MR. TOPOLSKI: Ramiro Perez. What does he do?

22 A He does -- he works for shift as a 50 pound put away. He
23 takes the finished good from the 50 pound line and puts them
24 into the finished goods area for shipping.

25 Q Okay. From nine to ten, correct?

1 A Yes.

2 Q All right.

3 HEARING OFFICER MEZA: When you say goods, we're talking
4 about oil, right?

5 THE WITNESS: Yeah. It's regular cooking oil.

6 HEARING OFFICER MEZA: Okay.

7 MR. TOPOLSKI: Finished product.

8 HEARING OFFICER MEZA: Okay.

9 Q BY MR. TOPOLSKI: Okay, I think we've covered everybody in
10 the packaging department. Now, from packaging, it goes into
11 the put away. And we talked about that. That's area number
12 ten, correct?

13 A Yes.

14 Q Okay. And then where do the good go from the put away
15 area?

16 A They go -- the packaged goods go to the shipping area,
17 which is 11. Between 11 and 18 there, there's docks.

18 Q Okay. Just so the record is clear. Who is the supervisor
19 for all of the packaging people?

20 A I am.

21 Q Okay. And who is the supervisor currently for all the
22 terminal people?

23 A I am.

24 Q Okay. And we're getting ready to talk about shipping
25 people, correct?

- 1 A Yes.
- 2 Q Who's the supervisor for all those people?
- 3 A I am.
- 4 Q Okay. And I'm -- just so the record's clear, who's the
- 5 supervisor for quality?
- 6 A Currently it's open.
- 7 Q All right. Okay. Let's talk about shipping for just a
- 8 minute. You know what, let's talk about receiving before we
- 9 get to shipping, because they're the two areas that are left in
- 10 the plant. Where is the receiving area on Exhibit 1?
- 11 A The raw material receiving is 12, is where the docks area
- 12 is.
- 13 Q Okay. And we have three people listed in the receiving
- 14 area. The first is Carlos Alban. Is he really in receiving?
- 15 A He's our purchaser.
- 16 Q Okay. And what do -- and where does he sit?
- 17 A He sits in the receiving office area.
- 18 Q And where is that?
- 19 A Number 17.
- 20 Q Okay. And what does he do?
- 21 A He purchases raw materials.
- 22 Q Okay. And he works from when to when?
- 23 A He works -- his schedule changes, depending on the demand.
- 24 So he's a first shift employee.
- 25 Q Okay. Does he go anywhere else in the plant besides are

1 17?

2 A He attends our production meetings. So he'll be in area
3 16.

4 Q Okay. That's the 10:00 meeting you spoke about earlier?

5 A Yes.

6 Q Okay. Anyplace else he would go?

7 A He has helped with receiving on a forklift before, so he
8 would be in area 12.

9 Q Okay. What does Antonio Hernandez do?

10 A He receives the product, the raw material. He unloads it
11 with the forklift.

12 Q Okay. Does he to do -- where does he work? What area?

13 A He works in area 12 and in the office, 17.

14 Q Okay. Would he go anywhere else in Exhibit 1?

15 A He would go to the label room area, which is along the
16 wall by 16. And also, we have the cages in building 14 for the
17 material that's received on that side. He would go there as
18 well.

19 Q And what would he go to building 14 for?

20 A To -- we have a cage for items that are received in the
21 maintenance department, 13 --

22 Q Uh-huh.

23 A -- to take those items and bring them to the packaging
24 area.

25 Q What kind of items would they be?

1 A They could be miscellaneous cleaning items, labels.

2 Sometimes they're in that area.

3 Q Okay. What about Carlos Hernandez? What does he do?

4 A He helps receive with the forklift.

5 Q Okay. Does he do anything else?

6 A He can also help in the five quart line.

7 Q Okay. Would he have an occasion to go anywhere besides
8 area 12 in the -- in Exhibit 1?

9 A He could also go to the cage in 14.

10 Q And what about Ramiro Perez?

11 A He's the put away.

12 Q Okay. That's right. We had him in the wrong spot.

13 A But we already discussed --

14 Q Okay. Good.

15 HEARING OFFICER MEZA: And just going back to Antonio.

16 You were referring to Antonio Hernandez, correct? Because I
17 think on the record, all we have is just Antonio.

18 MR. TOPOLSKI: That would be correct, right.

19 HEARING OFFICER MEZA: Hernandez. Okay.

20 MR. TOPOLSKI: Right. There's an Antonio Hernandez and a
21 Carlos Hernandez. That's correct.

22 Q BY MR. TOPOLSKI: Okay. All right. And who's the
23 supervisor of these three people?

24 A I am.

25 Q Okay. All right. Now let's talk about shipping for just

1 a little bit. Where is shipping on Exhibit 1?

2 A Shipping is area 11 through 18. There's docks there.

3 Q Okay. All right. And what happens in the shipping
4 department?

5 A The finish good product goes out those docks. Trucks come
6 in there and the shippers will load it into those. And then
7 they get shipped out.

8 Q And what do the shippers use to load the trucks?

9 A Forklifts.

10 Q Okay. And how is it determined which shipper loads which
11 trucks?

12 A So there's an office at 18.

13 Q Uh-huh.

14 A And the trucks will come and they'll check in.

15 Q Who do they check in with?

16 A They check in with -- right now, they're checking in with
17 a -- either with Josh Ennulat, who's --

18 Q And he's the first person I want to talk about. Ennulat.
19 What does he do, Josh Ennulat?

20 A He is checking in the trucks. And he's also helping to
21 load trucks.

22 Q Okay. So he works a forklift, too?

23 A Yes, he does.

24 Q Now, when you say he checks in the truck, exactly what
25 does he do? Does he go outside to the dock or do the drivers

1 come to him? How does that work?

2 A The drivers come up to the window and they give him their
3 load number.

4 Q Uh-huh.

5 A So he'll look into our system to make sure it's a good
6 number. And then we have a lot of trucks that come in. So
7 he'll check them in, depending on what their appointment time
8 is, if -- or if they're early, they're late or if they're
9 supposed to be there then. Then they'll get loaded. So he
10 prints the pick list.

11 Q Okay. Does everybody in the -- let's cut some of this
12 out, if we can. Does everybody in the shipping department
13 generally work on the same shift?

14 A Yes.

15 Q They generally work the same hours?

16 A It's generally the same. Some may be in a little early
17 and some may be a couple hours later to close up. But it's
18 generally the same first shift.

19 Q Okay.

20 HEARING OFFICER MEZA: And what would those hours be
21 again, approximately?

22 THE WITNESS: Approximately -- at the earliest, it's
23 usually 4:00 a.m. that they would come in early and we have had
24 to leave as late as 7:00 p.m. before, depending on the trucks.

25 HEARING OFFICER MEZA: But generally.

1 THE WITNESS: Generally it's more of a 5:00 to 5:00.

2 HEARING OFFICER MEZA: 5:00 a.m. to 5:00 p.m.?

3 THE WITNESS: 5:00 a.m. to 5:00 p.m., yes.

4 HEARING OFFICER MEZA: Okay.

5 MR. TOPOLSKI: Okay.

6 MR. CANTORE: I think that's how often the -- that's how
7 long the department is open. I don't think anybody works 5:00
8 to 5:00, do they?

9 THE WITNESS: People have worked --

10 MR. CANTORE: But generally speaking, it's an eight hour
11 shift.

12 HEARING OFFICER MEZA: Yeah, we're just saying generally
13 on average.

14 MR. TOPOLSKI: Right. That's right. Because --

15 HEARING OFFICER MEZA: Usually.

16 MR. TOPOLSKI: The rule here is generally the shifts --

17 THE WITNESS: Are eight hour shifts.

18 MR. TOPOLSKI: -- are what they are, but I don't want to
19 say that that's all they are all the time, because people --

20 MR. CANTORE: I appreciate that.

21 MR. CANTORE: -- work different hours.

22 HEARING OFFICER MEZA: Yeah. Yeah.

23 MR. CANTORE: This is a business. They vary.

24 HEARING OFFICER MEZA: Yeah.

25 THE WITNESS: Yeah.

1 MR. CANTORE: But I wanted the record clear --
2 HEARING OFFICER MEZA: Yeah.
3 MR. CANTORE: -- that when --
4 HEARING OFFICER MEZA: Yeah.
5 MR. CANTORE: -- you said 5:00 to 5:00, that isn't a
6 normal shift.
7 HEARING OFFICER MEZA: Yeah.
8 MR. CANTORE: That is the normal time that the department
9 is open, correct?
10 HEARING OFFICER MEZA: Okay.
11 THE WITNESS: Yeah, it's not a normal shift, no.
12 HEARING OFFICER MEZA: The --
13 MR. CANTORE: Yeah.
14 THE WITNESS: It's not what we would schedule for.
15 MR. CANTORE: Yeah.
16 THE WITNESS: But there's overtime.
17 HEARING OFFICER MEZA: Yeah. And what the reader of the
18 record would want to know is what typic -- what hours do these
19 employees in shipping usually work on a daily basis. From what
20 hours do they start and what hour do they end.
21 THE WITNESS: So we start --
22 HEARING OFFICER MEZA: On average.
23 THE WITNESS: The shipping hours are from 7:00. The last
24 appointment is at 3:00. But they also do --
25 HEARING OFFICER MEZA: So 7:00 a.m. to 3:00 p.m.

1 THE WITNESS: Yes.

2 HEARING OFFICER MEZA: Usually. That's the normal --

3 THE WITNESS: Usually -- that is --

4 HEARING OFFICER MEZA: -- that's the normal hours.

5 THE WITNESS: -- that's the shipping hours.

6 HEARING OFFICER MEZA: Okay. All right.

7 Q BY MR. TOPOLSKI: What does Carlos Espinoza do?

8 A He's a loader.

9 Q And when you say loader, exactly what does that mean?

10 A He takes the finished good material from the warehouse
11 area and puts it into a truck for shipment.

12 Q Okay. And that's what all the loaders do?

13 A Yes.

14 Q Okay. So we can short cir -- I'm trying to short circuit
15 some of this, if I can. Leonardo Garcia. What does he do?

16 A He's an inventory controller.

17 Q And where does he sit?

18 A He currently sits in the front office area. He used to
19 sit in the shipping department office.

20 Q Okay. And what does he do?

21 A So he -- with the SAP, he has to check for inventory
22 discrepancies. He -- what we call TECO, technically complete
23 and SAP orders. And he oversees stock transfers to our third
24 party logistics.

25 Q And where does he go besides area 18 on Exhibit 1?

- 1 A He's generally in 18.
- 2 Q Does he go other areas, though?
- 3 A He -- on occasion, he has come through to 16 for meetings
- 4 and stuff. But he's generally in the 18 area.
- 5 Q Okay. What about Alberto Ramirez? What does he do?
- 6 A He's a loader.
- 7 Q And so he would do the same thing as Carlos Espinoza?
- 8 A Yes.
- 9 Q Okay. What about Eddie Padilla?
- 10 A He is a super user for our SAP deployment.
- 11 Q Help us out there. What is a super user for SAP
- 12 deployment?
- 13 A So he was one of the ones that was part of us that went
- 14 out for the initial training to come back and train others and
- 15 help with the deployment. We're about two and a half months
- 16 in, so we still have a lot of --
- 17 Q Okay.
- 18 A -- bumps in the road.
- 19 Q Where does he sit now?
- 20 A He sits in the front office, close to Law enforcement
- 21 officer.
- 22 Q Okay. Does he help with the loading of the trucks and
- 23 all?
- 24 A Currently no.
- 25 Q Okay. Is he scheduled to go back to helping load trucks?

1 A No. His previous role was the shipping clerk. He didn't
2 actually --

3 Q Okay. So he does -- he did the same thing that Leonardo's
4 doing now.

5 A No, he was -- he did what Josh is doing. And --

6 Q Okay. Good.

7 A -- some other -- yeah.

8 Q Okay. What about Raymond Ramirez?

9 A He's the shipping lead.

10 Q Okay. What does he do?

11 A Right now he spends a lot of his time on what we call Idoc
12 failures. So the systems that we have, if the communication
13 isn't working correctly.

14 MR. CANTORE: Don't you love computers?

15 THE WITNESS: Yeah. He spends a lot of his time
16 correcting that, backing -- it's got to -- from beginning to
17 end, the system has to run perfectly, or else it fails.

18 HEARING OFFICER MEZA: Okay. Just one thing that I want
19 to stay on the record is when she's describing the frequency or
20 the amount of time, we just -- the reader of the record needs
21 to now approximately how many time -- how much time are talking
22 about. And you know, when she explains that someone goes from
23 one place to another, we need to know, is it daily? Is it, you
24 know, once a week?

25 MR. CANTORE: Oh, I'll get into all that. I promise.

1 HEARING OFFICER MEZA: We just need a little more detail
2 on that. Otherwise -- you know, because we have so many
3 individuals that we're talking about. So we just need --

4 MR. TOPOLSKI: Right.

5 HEARING OFFICER MEZA: -- a little bit more info on that,
6 okay?

7 MR. TOPOLSKI: Okay.

8 HEARING OFFICER MEZA: Thank you.

9 Q BY MR. TOPOLSKI: Oscar Ramos, what does he do?

10 A He's a loader.

11 Q So he would do the same thing that Mr. Espinoza does,
12 right?

13 A Yes.

14 Q All right. What about Charles Talbert?

15 A He is a loader as well.

16 Q Okay. And he would do the same thing as Mr. Ramos and Mr.
17 Espinoza does, right?

18 A He does. And he has helped us before on the 35 pound put
19 away.

20 Q Okay. Donna Teuscher.

21 A She's the transportation coordinator.

22 Q And what does she do?

23 A She schedules the package trucks and she monitors the bulk
24 trucks for changes.

25 Q Okay. And where does she sit?

- 1 A She sits in the shipping office.
- 2 Q Okay. Does she go anyplace other than area 18 on this
- 3 diagram in Exhibit 1?
- 4 A Not really. She's primarily in area 18.
- 5 Q Okay. Does she do anything else?
- 6 A That's pretty much her role as the transportation clerk as
- 7 to what the --
- 8 Q Okay.
- 9 A The trucks need to be rescheduled pretty often.
- 10 Q Has she ever helped in any other areas?
- 11 A She sometimes had helped with checking in trucks.
- 12 Q Okay. And that would be what areas?
- 13 A Eighteen as well. She has helped make phone calls for the
- 14 railroad, when we have railroad issues. But still from 18.
- 15 Q Okay. All right. Okay. I guess we have just a few more
- 16 people to talk about. And that is the maintenance department,
- 17 all right? What does -- first of all, the maintenance
- 18 department is where?
- 19 A The maintenance department is building 13.
- 20 Q Okay. And what goes on in building 13?
- 21 A That is the maintenance shop, where the mechanics office
- 22 out of. The supervisor offices out of there. The scheduler
- 23 for work orders offices out of there. And equipment, tools,
- 24 are stored in there.
- 25 Q Okay. What does Felix Asuncion do?

- 1 A He's a mechanic for first shift. So --
- 2 Q And what does that entail? Exactly what does he do?
- 3 A He fixes whatever's broken basically.
- 4 Q Okay. Now his hours are generally from what to what?
- 5 A He starts -- I believe he starts from 6:00 till like 3:00/
- 6 Q Okay.
- 7 A 6:00 a.m. to 3:00 p.m.
- 8 Q Okay. Now, when you fixes whatever broke, where on
- 9 Exhibit 1 does he go on a daily basis?
- 10 A He could go virtually anywhere on Exhibit 1 to fix
- 11 something, so --
- 12 Q How often is he in the areas for, let's say eight, nine
- 13 and 16?
- 14 A Well, he's in area nine often. We have a lot of movie
- 15 equipment that requires mechanical attention often.
- 16 Q And what would he do in area nine?
- 17 A He would work on the equipment on the lines.
- 18 Q And when he goes to work on the equipments on the line in
- 19 area nine, who does he communicate with?
- 20 A He'll talk to the lead, or he'll spoke to the operator
- 21 that called him over. So depending on what he's working on,
- 22 he'll ask questions to find out what he needs to fix.
- 23 Q Okay. What about Paul Crumley? What does he do?
- 24 A He schedules the work orders, the non-emergency work
- 25 orders.

1 Q And where does he sit?

2 A He sits in building 13.

3 Q Okay. And does he get out to any other areas of Exhibit

4 1?

5 A Yes, he will walk around for these work orders. He'll

6 have to assess, so that he can see what parts are needed. So

7 he'll walk around to the areas.

8 Q And which areas does he walk around?

9 A He walks around the terminal areas or the --

10 Q When you --

11 A -- packaging areas.

12 Q -- say the terminal areas, give us numbers, so the

13 record's clear.

14 A So depending on what the work order's for, he could be on

15 three. If it's a pump in area three, a pump in area seven, an

16 agitator. It could be any general area. Three, seven, five.

17 He can even go to the lab, 15, depending on what the work

18 order's for. Production. He's come into our area to ask about

19 our pumps, seals, different things.

20 Q How often does he come into the production area?

21 A Depending upon the work orders, I've talked to him a

22 couple times already on different work orders I've written. So

23 he's been through there a few times.

24 Q Okay.

25 MR. CANTORE: Few times --

1 HEARING OFFICER MEZA: Okay.

2 MR. CANTORE: -- in what span?

3 HEARING OFFICER MEZA: Yeah, we need more detail.

4 MR. CANTORE: Few times a year?

5 HEARING OFFICER MEZA: We need to know if it's on a daily

6 basis.

7 MR. CANTORE: Few times a century.

8 HEARING OFFICER MEZA: A couple of times a week? We need

9 more detail.

10 THE WITNESS: About once a week.

11 HEARING OFFICER MEZA: Okay.

12 Q BY MR. TOPOLSKI: What about George Trevino? What does he

13 do?

14 A He's a second shift mechanic.

15 Q Okay. So what does his job entail?

16 A Same as Felix.

17 Q Okay. And how often does he get around, say, areas eight,

18 nine, around that and around that?

19 A He -- as often as Felix. We probably have a mechanic in

20 our area at least once a day.

21 Q Okay. One each shift.

22 A At least once a day. Sometimes we'll have two mechanics,

23 depending on the shifts. But we usually have at least one

24 breakdown of some type a day that requires a mechanic.

25 Q Cristian Ayala-Berumen. What does he do?

- 1 A He's a third shift mechanic.
- 2 Q So he would do the same thing as the other first and
3 second shift mechanic?
- 4 A Yes.
- 5 Q Okay. Is there anybody else who works in maintenance
6 that's not on this list?
- 7 A No.
- 8 Q Is there an open position in maintenance that's not?
- 9 A Yes.
- 10 Q And what is that position?
- 11 A That is purchasing for maintenance equipment.
- 12 Q Okay. And -- but nobody's in that position right now,
13 right?
- 14 A No, it's open.
- 15 Q Do you know what that position entails?
- 16 A Minimally. Just it's purchasing for -- so, when a work
17 order is written, there's stuff that's required to fix the
18 equipment and so that is on the work order, so that that person
19 can purchase.
- 20 Q And where does that person sit?
- 21 A In 13.
- 22 Q Okay. How is production scheduled on a daily basis at the
23 plant?
- 24 A Kelli Stiver, the production scheduler schedules
25 production.

1 Q And what does she do and how does she do that?

2 A She has -- she uses SAP, a tool in SAP, which shows the
3 demand of -- the customer demand and she schedules the lines
4 with that.

5 Q And when you say she schedules the lines, exactly what
6 does that entail?

7 A She puts the order of what is to be ran on the schedule
8 for everyone to see how -- what needs to be ran --

9 Q And do you know who decides --

10 A -- on a daily basis?

11 Q -- what needs to be run on any particular day?

12 A The schedule dictates what needs to be ran.

13 Q And what do you mean by the schedule? What do you really
14 mean?

15 A Kelli.

16 Q Right. The customers, right?

17 A Yeah. Or -- the customers, yes, definitely.

18 HEARING OFFICER MEZA: And when you say what needs to be
19 run, what exactly are you talking about? What items need to be
20 produced?

21 THE WITNESS: What items, yeah. We have over 200
22 different items. So depending on what the customer demand is
23 is what will be on that production schedule.

24 HEARING OFFICER MEZA: Okay.

25 Q BY MR. TOPOLSKI: And how's that schedule disseminated?

- 1 A She puts it together daily and sends out in an email.
- 2 Q Okay. Now, we have several break rooms in the plant,
- 3 correct?
- 4 A Yes.
- 5 Q Can you tell me where in Exhibit 1, each break room is?
- 6 A There's one by 16, along the wall, if you kind of go up a
- 7 little bit.
- 8 Q Okay. And what's that break room called?
- 9 A The break room.
- 10 Q Who uses the break room by 16?
- 11 A Mostly the line, production line employees.
- 12 Q Anybody else use the break room in 16?
- 13 A The receiving department.
- 14 Q Okay.
- 15 A And anyone in the area. Contractors. Anyone in the area
- 16 can use the break room.
- 17 Q Okay. Where's the next break room?
- 18 A There's one by 18.
- 19 Q Okay. And who uses that break room?
- 20 A That one's used by the people in the shipping office, the
- 21 people in the front office and whoever else is in the area that
- 22 needs to use a break room.
- 23 Q Okay. Where is there another break room?
- 24 A In building 14.
- 25 Q Okay. Now who uses that break room?

1 A The people from the lab, the terminal maintenance and the
2 engineers. Anyone else who's in the area that wants to use the
3 break room.

4 Q Does anybody from areas around number nine use the break
5 room in 14?

6 A On occasion, yes.

7 Q What makes the break room in 14 more attractive to -- than
8 the other break rooms?

9 A The one in 14 has gone -- undergone -- or it's much nicer.
10 We redid. We haven't had the opportunity to do the one in
11 packaging yet, but that's the next one on the list.

12 Q And hat kind of amenities does it have that the other ones
13 don't have?

14 A It has pretty much a functional kitchen. Excuse me.
15 Microwave, stove, oven.

16 Q All right. Does everybody take their breaks at the same
17 time?

18 A Throughout the facility, no.

19 Q Yeah. Do you know how the breaks are organized?

20 A It's on pretty much a time basis and when you started. So
21 every two hours, you should be taking a break.

22 Q Okay. Who -- is there any group of employees that are
23 required to all take their break at the same time?

24 A From the production lines, they will take their breaks at
25 the same time.

1 Q Okay. And which employees are they?

2 A They are the ones -- specifically, the ones working the
3 lines. Either the depal, the filler, the palletizer.

4 Q Are all lines required to take breaks at the same time?

5 A They're not required to, but usually with -- if we have a
6 reliever and everyone was in -- all positions were filled, we
7 could go through and have that person relieve for breaks. But
8 currently we don't. We have enough openings where if we are
9 going to take a break, everyone has to go or else we can't run
10 the line.

11 Q Okay. Do you shut down the line for a break?

12 A Yes.

13 Q All right. Now, do you shut down the line for the meal
14 periods or the break periods or both?

15 A Both.

16 Q Okay. So anybody else on this list in Exhibit 2 can take
17 their lunchtime and their break time whenever production
18 allows, correct?

19 A Yes.

20 Q I don't think I have any more questions for you.

21 HEARING OFFICER MEZA: Okay.

22 MR. CANTORE: Can I have five minutes? That's all I'm
23 going to need.

24 HEARING OFFICER MEZA: To -- off the record, or you --

25 MR. CANTORE: Off the record --

1 HEARING OFFICER MEZA: -- need to question?

2 MR. CANTORE: -- before I question.

3 HEARING OFFICER MEZA: Okay. Yes. Yes. Okay. Off the
4 record.

5 (Off the record at 11:12 a.m.)

6 HEARING OFFICER MEZA: Okay, are we on the record?

7 THE REPORTER: Yes.

8 HEARING OFFICER MEZA: Okay. So we just went ahead and
9 took a short break. And now we're going to go ahead and resume
10 with the testimony of Ms. Puig, and on cross-examination.
11 Okay, Mr. Cantore, are you ready to begin with this witness?

12 MR. CANTORE: Sure.

13 HEARING OFFICER MEZA: Okay.

14 CROSS-EXAMINATION

15 Q BY MR. CANTORE: Ms. Puig, can you give me your title
16 again?

17 A Packaging and shipping supervisor.

18 Q Are you sometimes referred to as a level two supervisor?

19 A Sometimes. Not -- that's not my title, but yeah.

20 Q Isn't a packaging and shipping --

21 A Supervisor.

22 Q -- supervisor a level two?

23 A The supervisor level two, it defines the -- I think it's
24 the amount of people you supervise. There's a supervisor one
25 and there's a supervisor two.

- 1 Q Who are the supervisor ones?
- 2 A I don't know offhand of any.
- 3 Q Aren't they the leads?
- 4 A No.
- 5 Q Are you sure about that?
- 6 A Yes.
- 7 Q Okay. Now, you just said packaging and shipping, but you
- 8 also told us you're supervising bulk. How long have you been
- 9 doing that?
- 10 A I've been doing it for about two and a half weeks.
- 11 Q Okay. And prior to you doing that, who was the supervisor
- 12 for bulk?
- 13 A Joe Rivera.
- 14 Q And at one point in time, you were the supervisor for
- 15 bulk, weren't you?
- 16 A Yes, I was.
- 17 Q At that point in time, who was the supervisor for
- 18 packaging and shipping?
- 19 A Gil Alvarado.
- 20 Q Okay. And when Mr. Alvado left -- Alvarado left, you
- 21 moved over, correct?
- 22 A No, he was still there.
- 23 Q And what? He got promoted?
- 24 A We swapped positions.
- 25 Q Oh you swapped. Okay.

1 A We swapped areas. So he became the terminal supervisor
2 and I became the packaging and shipping supervisor.

3 Q So until two weeks ago, there's always been separate
4 supervision for bulk and for packaging and shipping, correct?

5 A When he left, I was the bulk terminal supervisor and the
6 packaging and supervisor at that time again.

7 HEARING OFFICER MEZA: Okay. And just for clarification,
8 when you say bulk, you're talking about terminal, right?

9 THE WITNESS: Yes.

10 HEARING OFFICER MEZA: Okay.

11 THE WITNESS: So this is the second time that I have
12 managed both areas.

13 Q BY MR. CANTORE: Okay. And hopefully that won't be for
14 long, correct?

15 A I'm not sure.

16 Q Now, where is your office, if you --

17 A If -- on the exhibit, it's in 16.

18 Q Sixteen. And where is Kelly's office?

19 A She offices with me in 16.

20 Q Sixteen. And in -- there was a superintendent plant --
21 I'm not sure of his title. But where does Mr. Valadez sit
22 basically?

23 A He currently sits in 18, but he's in the process of moving
24 to 14.

25 Q Okay. The offices in 14 are nicer, aren't they?

- 1 A It's larger.
- 2 Q Larger. That's where HR is now, right?
- 3 A Yes.
- 4 Q Okay. And where does Darren Meade sit?
- 5 A He sits in 18.
- 6 Q And his position with the company is?
- 7 A Operations leader.
- 8 Q Okay. What else is in 18?
- 9 A The accounting department.
- 10 Q Okay. So there are a lot of offices there, correct?
- 11 A There are five offices.
- 12 Q Okay. And is there a separate break room for the offices?
- 13 A There is a small break room that doesn't have a microwave.
- 14 There's a refrigerator and a coffee maker.
- 15 Q Okay. And 18 is -- also has a break room next to it
- 16 that's open to all the employees, correct?
- 17 A Yes, it's the larger one that has the microwaves.
- 18 Q Okay. And there's another break room by 16, correct?
- 19 A Yes.
- 20 Q And that's open to all the employees, correct?
- 21 A Yes.
- 22 Q Can a shipping employee use the break room by 16?
- 23 A Yes.
- 24 Q Do they ever do that?
- 25 A If they did, it would be rarely, because it's a lar -- oh,

1 the distance.

2 Q Is it a nicer break room than by 18?

3 A It is a nicer break room by 18.

4 Q Where are the restrooms?

5 A There are restrooms by both break rooms.

6 Q And 14. I believe you testified that's been redone.

7 A Yes.

8 Q The break room by 14.

9 A Yes, it has.

10 Q And it now has a whole full kitchen?

11 A Yes.

12 Q And showers, too?

13 A In the locker.

14 Q Are there any showers in that whole big building that is
15 18 to 16 diagonally across?

16 A Currently there is not.

17 Q Okay. Do you have any plans to put showers in there?

18 A We're going to -- we plan to redo the break room and the
19 restrooms that are along the wall of 16.

20 Q That wasn't my question. Are you planning on putting in
21 showers in the redone bathroom or change room or whatever in
22 the building that is diagonally from 18 to 16?

23 MR. TOPOLSKI: Objection. I don't see the relevance to
24 this.

25 HEARING OFFICER MEZA: How's that relevant?

1 MR. CANTORE: Well, I'm going to get into the relevance.
2 Can I have a little bit of leeway? It is cross.

3 HEARING OFFICER MEZA: Okay. Okay. Overruled.

4 THE WITNESS: There was talk of it. There was what was a
5 shower in it that kind of got make shifted into a mop area.
6 But, yes, there has been talk of putting showers --

7 Q BY MR. CANTORE: Okay.

8 A -- into that break room.

9 Q Now, the job -- first of all, the oil we're using, just
10 for clarification, we're not talking about the oil that comes
11 out of the ground, then ExxonMobil --

12 A No. This is all food grade oil.

13 Q This is all food oil. Okay. And do you make any consumer
14 or is this all -- you know, I wouldn't go out and buy a 35-
15 gallon box of --

16 A You could. This --

17 Q I'm --

18 A We do make consumable oils, yes.

19 Q Those are the smaller bottles, the gallon bottles and
20 things like that?

21 A Yes.

22 Q Okay. But most of the oil, the big packages, that's for
23 McDonald's or somebody else that uses frying -- oil for frying
24 and things like that --

25 A Yes.

- 1 Q -- correct?
- 2 A Uh-huh.
- 3 Q Okay. Now, the persons who work in the terminal area --
- 4 A Uh-huh.
- 5 Q -- are they -- they're dealing with valves and grease from
- 6 the oil and things like that, correct?
- 7 A They are dealing with valves and pumps.
- 8 Q Do they get a lot dirtier than the employees in packaging?
- 9 A The -- dependent upon the area. The -- like the bulk load
- 10 out will not -- that's true grade oil. It's getting loaded
- 11 into a food grade vessel. So somebody that may be unloading
- 12 railcars would probably get dirtier than somebody that is doing
- 13 bulk load out.
- 14 Q Okay. And all these tanks, are they valve operated, hand
- 15 valve operated?
- 16 A They are -- there are some with actuating valves and the
- 17 majority still have regular -- either it's a chain valve or
- 18 it's a hand valve operation.
- 19 Q An actuating valve, how does that work?
- 20 A It's the beginning of our automation process. So it's an
- 21 air actuating valve that will open.
- 22 Q Okay. Now, you mentioned that employees, lots of various
- 23 employees, bring samples to the lab, correct?
- 24 A Yes, I did.
- 25 Q Exactly how long are they allowed to hang out in the lab

1 and, you know, socialize with the lab workers?

2 A Well, we don't like people to stand around and socialize
3 anywhere, so they'll go ahead and go into the lab and -- and
4 just drop off the samples and do the communication required for
5 the --

6 Q What communication is required?

7 A The lab tech may ask what they're planning to run, how
8 many -- we can take a lab sample from say tank -- one of our
9 soy tanks and we may run more than one product for that. So
10 there will be, "How many products are we going to run?" so that
11 they know what the next tank sample would be.

12 Q Okay. In terms of general rules, and I appreciate for
13 every general rule there are always exceptions, but as a
14 general rule, when moving a sample from the packaging area,
15 that building, to the lab, as a general rule, isn't that the
16 lead's job?

17 A It's -- excuse me -- it's part of what they do, yes.

18 Q Okay. And so that if an operator or somebody else moves,
19 it's because the lead was busy doing something else and said to
20 the person, "Do my job and go take this sample over," correct?

21 A It wouldn't be, "Do my job," to take this over. We do a
22 lot of backing up on the lines.

23 Q Okay. Now -- and once they're there, the time there could
24 be at least as short as dropping off the sample, which is
25 labeled already, correct?

1 A It is labeled, yes.

2 Q And they have to fill out some kind of paperwork, correct,
3 which is right there on the -- on the desk that they drop the
4 sample off on?

5 A Yes.

6 Q Okay. And then they leave, for the part most part?

7 A If they're doing a changeover, there's also a keyboard
8 that's in the lab, it's held in the lab, which is the entire
9 tank farm. And to prevent commingles, there's also -- there's
10 a board on there so that everyone who's moving oil and using a
11 tank has to also fill that out; they have to remove the key
12 from the keyboard that is held in that lab and they hold on to
13 those keys during the process of the time that they're --

14 Q Okay.

15 A -- using that tank.

16 Q So even the terminal employees don't hang out at the lab
17 that long, correct; they're just filling out the keyboard,
18 doing the paperwork, dropping off the sample and then going
19 back to their regular jobs, correct?

20 A Yes.

21 Q Okay. Now, what's a transfer again that -- of oil?

22 A A transfer is when you move product from one tank to
23 another tank.

24 Q Okay. And in terms of moving it from packaging -- moving
25 it from the terminal to packaging, that's always done in that

1 line, that is on the bottom part of the picture, across the
2 railroad tracks, correct?

3 A Yes.

4 Q Okay. Let me see if you can possibly -- I know you didn't
5 take it, but you didn't take this picture either; maybe you can
6 identify it anyway for me. Where the heck is it? Oh, here we
7 go.

8 MR. CANTORE: Can we have marked -- this marked as
9 Petitioner -- or -- Petitioner's, right --

10 HEARING OFFICER MEZA: That's fine.

11 MR. CANTORE: -- Exhibit 1?

12 **(Petitioner Exhibit Number 1 Marked for Identification)**

13 Q BY MR. CANTORE: Do you recognize what is depicted in that
14 picture?

15 A It's the pipe rack that extends from the tank from -- to
16 the packaging warehouse.

17 Q And those are the pipes you're referring to, correct?

18 A Yes.

19 Q And approximately how much --

20 MR. TOPOLSKI: Can I just make sure the record's clear.
21 We're talking about the area from number five to Exhibit 16
22 (sic) on Employer's Exhibit 1, correct?

23 MR. CANTORE: Correct.

24 MR. TOPOLSKI: That's what Petitioner --

25 HEARING OFFICER MEZA: Number --

1 MR. TOPOLSKI: -- Number 1 purports to represent, right?

2 HEARING OFFICER MEZA: Number 5 --

3 MR. CANTORE: That is correct.

4 MR. TOPOLSKI: Okay. Just making sure --

5 HEARING OFFICER MEZA: -- to number 16?

6 MR. TOPOLSKI: -- the record's clear. Yes, that line --

7 HEARING OFFICER MEZA: Oh, I see.

8 MR. TOPOLSKI: -- that goes from 5 to 16.

9 HEARING OFFICER MEZA: Okay. On Employer's Exhibit 1?

10 MR. TOPOLSKI: And this is for Petitioner's Exhibit 1.

11 It's supposed to be a picture of that pipeline. Okay.

12 HEARING OFFICER MEZA: I see. Okay.

13 MR. TOPOLSKI: I'm just making sure we're clear.

14 I'm sorry. Go ahead.

15 MR. CANTORE: Thank you for clarifying that.

16 Q BY MR. CANTORE: And approximately how many lines of track

17 are there?

18 A There are three tracks that we have.

19 Q Okay.

20 A There's two here and then a boxcar track.

21 Q Okay.

22 MR. CANTORE: I would offer Exhibit 1.

23 MR. TOPOLSKI: No objection.

24 HEARING OFFICER MEZA: Okay. Hearing no objection to

25 Petitioner's Exhibit 1, Petitioner's Exhibit 1 is hereby

1 received into the record.

2 **(Petitioner Exhibit Number 1 Received into Evidence)**

3 MR. CANTORE: Did you offer 1 and 2?

4 HEARING OFFICER MEZA: Yes.

5 MR. TOPOLSKI: I believe I did, yes.

6 HEARING OFFICER MEZA: Yes. They are both received.

7 Q BY MR. CANTORE: Now, Kelli's job is -- what's her last
8 name again? I'm sorry.

9 A Stiver.

10 Q Stiver. Kelli, where does she hang out?

11 A She offices in 16.

12 Q And I believe you testified she goes all around the plant
13 on a regular basis; is that true?

14 A She drops off the transfers that are done daily.

15 Q I'm -- she drops off the transfers. What does dropping
16 off the transfers mean?

17 A She will physically write up on a form what tanks the
18 origin tank will be to the tank -- the destination tank and how
19 much oil needs to be moved.

20 Q And how is that done?

21 A It's manual. It's a completely manual process. It's a
22 piece of paper that -- with boxes and she basically fills it
23 in, walks it over and gives it to them.

24 Q Doesn't use her e-mail?

25 A No. It's -- she can use e-mail. She has done so when

1 she's been out of office. But when she's in, she writes it up
2 manually and takes it over.

3 Q So if the gentlemen in this office -- I mean this hearing
4 room are all to testify, all four of them were to testify that
5 they've never seen Kelli leave the office and everything goes
6 out by e-mail, they would be lying?

7 A Well, I could -- we can give you the paperwork that's
8 handwritten. It was handwritten paperwork.

9 Q I can scan handwritten paperwork and e-mail it.

10 A You can, yes, but it's the original.

11 Q Okay.

12 A So the originals are taken over.

13 Q And where does Kelli go from -- from now?

14 A She goes from 16 to 15.

15 Q And is she in the unit?

16 A I'm sorry. When you --

17 Q What is her position on Employer's Exhibit 2? Is she
18 listed on --

19 A She is not listed in this list, no.

20 Q Okay.

21 MR. TOPOLSKI: For the record, she's not in either proposed
22 unit.

23 MR. CANTORE: Good.

24 Q BY MR. CANTORE: And what is a project?

25 A A project is something new that we're adding to the

1 facility.

2 Q So a new line, a new type of tank, a new type of storage
3 tank, something new, correct?

4 A It has to be a certain dollar amount to be considered a
5 project.

6 Q It's a capital expenditure, correct?

7 A Yes.

8 Q Okay. And you have engineers on staff?

9 A Yes, we do.

10 Q And they are in charge of the capital projects, the --
11 these projects we're referring to?

12 A Yes.

13 Q Okay. Do they ever fill in for supervision?

14 A Yes.

15 Q Okay. And where are the engineers located?

16 A They're in building 14.

17 Q And building 14 is the same building at -- that's -- okay.
18 That's HR and the other offices. Okay. Now, you testified
19 that several individuals, and I've forgotten their names, moved
20 from packaging to the terminal. Do you recall in the last five
21 years how many they -- there were?

22 A In the last five years?

23 Q Yeah.

24 A All I can recall is three offhand.

25 Q Of the three, how many of them were your employees? And

1 not the employees of the temp agency.

2 A I don't know offhand.

3 Q Isn't it a fact that none of them were your employees,

4 that all of them were temp employees?

5 A No, that is not a fact. Because I know for a fact that

6 Jaimar Williams was an employee.

7 Q And what was his job?

8 A He was a five-cart put away.

9 Q A forklift operator?

10 A Yes.

11 Q Okay. So two out of the three may have been?

12 A It's possible, yes.

13 Q Okay.

14 A I don't know offhand.

15 Q Now, how many bulk terminal, lab, mechanics, whatever,

16 transferred from the terminal building over to packaging in the

17 last five years?

18 A In the last five years, none that I can think of offhand.

19 Q No. That confirms with our information. Now, the rotator

20 operator, how do they get -- rotator. I'm calling it --

21 MR. TOPOLSKI: Votator with a V.

22 MR. CANTORE: Votator. I'm still calling it rotator

23 because it tricked me here; rotator operator.

24 Q BY MR. CANTORE: Votator operator, they're in area 8,

25 correct?

1 A Yes.

2 Q And how -- and they receive and send their oil through the
3 pipe system that's depicted in Petitioner's Exhibit 1 very
4 nicely, correct?

5 A Yes.

6 Q Okay. And they go into the -- I guess there's a hot oil
7 one and then it goes back into a whole -- a cold oil tank after
8 they finish votating it?

9 A It's not necessarily cold; it's just an origin and then a
10 gas station tank.

11 Q Okay. And then how often do they receive the oil and send
12 the oil back? Is that on a constant basis or is it you get it
13 in like 50 million gallons and then you cool that and then ship
14 it back with one big thing or is it a constant stream?

15 A It's a --

16 MR. TOPOLSKI: Objection. I'm not sure I understand the
17 question.

18 HEARING OFFICER MEZA: All right. Can you rephrase --

19 MR. TOPOLSKI: I don't know if --

20 HEARING OFFICER MEZA: -- the question?

21 MR. TOPOLSKI: -- we're talking about bulk oil or the
22 samples.

23 HEARING OFFICER MEZA: Okay. Can you rephrase the
24 question?

25 MR. CANTORE: The bulk oil.

1 Q BY MR. CANTORE: Is -- is this a continuous flow from one
2 tank in area five through the machine cooling it and then back
3 to another tank at area five or do you take a big transfer of
4 lots of gallons, cool that and then in one fell swoop move it
5 back to the other tanks?

6 A It's a continuous flow.

7 Q It's a continuous flow. So how often is a sample taken of
8 that continuous flow?

9 A Taken to the lab?

10 Q Yeah.

11 A I don't know offhand how many times they check the
12 viscosity.

13 Q Once a day, once a week, once a month?

14 A They -- they will take it -- check it at least once. It
15 may be more often if they are finding that the viscosity is low
16 and they're concerned that it may fall out of spec. They may
17 do more samples. And if they are doing more than one product,
18 they will have to do it more often. So if -- if the schedule
19 dictates three smaller votations, then they're going to do it
20 at least three times.

21 HEARING OFFICER MEZA: Three times a what? A day or --

22 THE WITNESS: A day.

23 HEARING OFFICER MEZA: Okay. I --

24 THE WITNESS: The schedule's for a day or --

25 Q BY MR. CANTORE: Now, is it --

- 1 A -- a shift.
- 2 Q -- always the operator who takes the sample over or
3 whoever's the lead does that?
- 4 A The votator operator takes their sample.
- 5 Q Always?
- 6 A Because they check the viscosity. I don't know that the
7 lead knows how to do the viscosity test.
- 8 Q Now, you mentioned Mr. Lim walking around with the rabbi?
- 9 A Yes.
- 10 Q How often does that happen?
- 11 A Now the rabbi comes twice a week.
- 12 Q And now being what? Since you had problems with the
13 rabbi? Before you had the problems with the rabbi, how many
14 times?
- 15 MR. TOPOLSKI: Objection; assumes facts --
- 16 HEARING OFFICER MEZA: Okay.
- 17 MR. TOPOLSKI: -- not in evidence.
- 18 HEARING OFFICER MEZA: Okay.
- 19 Q BY MR. CANTORE: Now -- you said now, and I've forgotten,
20 was it twice?
- 21 A Twice a week the rabbi comes now.
- 22 Q Go back six months. How often was the rabbi coming
23 around?
- 24 A He would come at least once a month.
- 25 Q And now it's more often?

- 1 A Yes.
- 2 Q Was there a reason for that?
- 3 A Because we have a non-kosher line.
- 4 Q Okay. And on each of these times the rabbi comes, Mr. Lim
- 5 escorts him into the packaging area?
- 6 A Somebody from quality will escort him from packaging area.
- 7 Q Usually Mr. Lim?
- 8 A Usually Mr. Lim.
- 9 Q Okay. Is Mr. Lim a lead?
- 10 A No. He's a technician.
- 11 Q Does he make more than the other technicians in that
- 12 quality control department?
- 13 A I don't know the salaries of the quality control
- 14 department.
- 15 Q You're the supervisor, aren't you?
- 16 A No, I'm not. My position's --
- 17 Q Oh, you're right.
- 18 A -- currently open.
- 19 Q You're right. I'm sorry. I take it back.
- 20 How often do the lab techs other than Mr. Lim go into 9?
- 21 A The lab techs -- we have paperwork that is put into a slot
- 22 in my office area from the line, and the lab techs come to pick
- 23 up the paperwork.
- 24 Q From your office?
- 25 A Yes.

1 Q Is there a door to your office that leads to the outside?

2 A There's a door through a hallway -- through a conference
3 room, through a hallway that would lead to the outside, or
4 there's --

5 Q Okay.

6 A -- a door that would go out through the production floor
7 and then a larger door that would lead to the outside.

8 Q So they don't have to actually enter the production area
9 at all to get into your office, correct?

10 A To get into my office, no.

11 Q Okay. By the way, that conference room by your office, is
12 that where you have the daily 10:00 meetings?

13 A It's usually where we have the 10:00 meetings, yes.

14 Q Okay. Who was at the 10:00 meeting yesterday?

15 A I don't know. I didn't attend the meeting yesterday.

16 Q Who was at the meeting -- the 10:00 meeting Friday?

17 A I don't know. I didn't attend it on Friday as well. But
18 I could get the list.

19 Q Who is the usual people -- who are the usual people that
20 attend the meetings on a regular basis?

21 A Usually -- usually I do attend on a --

22 Q Okay.

23 A -- regular basis. Lately there's been a lot going on.

24 And someone from maintenance, usually Dan Sparks, someone from
25 the lab --

- 1 Q Usually?
- 2 A Yes.
- 3 Q Usually who?
- 4 A Usually Steve or Anna.
- 5 Q Okay.
- 6 A And Carlos Alban and Lorraine Camacho come down.
- 7 Q Who's Carlos?
- 8 A He's the purchaser.
- 9 Q And he's in the --
- 10 A He sits in the --
- 11 HEARING OFFICER MEZA: Carlos Alban.
- 12 Q BY MR. CANTORE: Receiving?
- 13 A Yes.
- 14 Q And who else?
- 15 A And Lorraine Camacho.
- 16 Q And what is her position?
- 17 A She's a contract employee who does receiving.
- 18 Q Okay.
- 19 HEARING OFFICER MEZA: You mentioned Anna. Who's Anna?
- 20 THE WITNESS: She was the quality manager.
- 21 HEARING OFFICER MEZA: Oh, okay. Her last name?
- 22 THE WITNESS: Teheran.
- 23 HEARING OFFICER MEZA: Okay.
- 24 MR. TOPOLSKI: Do you know how to spell it for the court
- 25 reporter?

- 1 THE WITNESS: I believe it's T-E-H-E-R-A-N.
- 2 Q BY MR. CANTORE: Now, who is Kimberly Cruz?
- 3 A She is with engineering.
- 4 Q Okay. And she's located in 14 --
- 5 A Yes.
- 6 Q -- I think you said? And her job is what?
- 7 A She works with the engindineer -- excuse me -- engineering
- 8 department. She -- I don't know her specific job description,
- 9 but I know she does take care of permits and she works for the
- 10 contractors for setup. She does sniffing of the air, just
- 11 different duties.
- 12 Q Where does she perform these tasks?
- 13 A Wherever it's required, which could be in any area that
- 14 the --
- 15 Q In looking at Employer's Exhibit 1, both sides of the
- 16 tracks?
- 17 A Yes.
- 18 Q Okay. Where does she spend most of her time, which side
- 19 of the tracks?
- 20 A I don't know offhand.
- 21 Q Well, her office --
- 22 A She could be at either --
- 23 Q -- is at 14. Doesn't she spend a lot of time in her
- 24 office?
- 25 A Yeah. But I imagine she would spend more time in 14. But

1 depending on what's going on, she could be anywhere.

2 Q And what's going on means what's going on with the
3 projects?

4 A Yes.

5 Q Okay. So she wouldn't be in nine unless they were adding
6 a new line, there was some kind of new capital expenditure in
7 area nine, correct?

8 A Yes.

9 Q She wouldn't be in area eight unless there was a major
10 project in area eight, correct?

11 A Yes.

12 Q She wouldn't be in area 10 unless there was a major
13 project going on in area 10, correct?

14 A Yes.

15 Q Okay. And does she report directly to the engineers?

16 A Yes.

17 Q Okay. Now, I may have asked you, are leads level I
18 supervisors?

19 A No, they are not.

20 Q Okay. Who are the level I lead supervisors at that
21 facility?

22 A We don't have any.

23 Q So between you, a level II supervisor, level I is lower
24 than you, correct?

25 A I don't actually know the definition of what a -- the

1 description is for a level -- for a supervisor I or a
2 supervisor II.

3 Q But you are a supervisor II?

4 A Yes, I am.

5 Q And, as far as you know, there are no supervisor Is
6 working at this facility?

7 A No, I don't know that to be true. There could be. I
8 don't know what the other supervisors' levels are at.

9 Q Okay. Is there a supervisor III level?

10 A Not that I'm aware of.

11 Q Okay. Well, who is directly above you? To whom do you
12 report?

13 A Jesus Valadez.

14 Q And do you know what supervisor level he's at?

15 A I don't know.

16 Q Is he a V?

17 A It could be a completely different title. I don't know.

18 Q Okay. Now, other than the packaging employees, who from
19 bulk other than possibly -- how quickly I forget --

20 HEARING OFFICER MEZA: Can we call it terminal just --

21 MR. CANTORE: I'm sorry?

22 HEARING OFFICER MEZA: Can we call it terminal?

23 MR. CANTORE: Terminal? I'm sorry. You're right.

24 Q BY MR. CANTORE: Other than Ms. Cruz and Mr. Lim, who --
25 and I may be wrong -- who else from the terminal goes into

1 packaging?

2 A So when you refer to the terminal, neither Steve Lim or
3 Kim Cruz are from the terminal department. They're from the
4 lab and engineering department.

5 Q Okay.

6 A So I'm just --

7 Q Is there a general name that you use for the entire area
8 to the right of the tracks in Employer's Exhibit 1? Do you
9 refer to that as bulk or do you refer to that --

10 A The tank farm we do refer to as bulk. But the maintenance
11 department is maintenance. It's not part of terminal. The lab
12 is --

13 Q Okay.

14 A -- the lab. It's not part of terminal.

15 Q Okay. By the way, on that picture --

16 A Uh-huh.

17 Q -- in the lower right-hand corner right above what looks
18 to be a ramp access for a car, there is a square. It looks
19 like a building. What's that?

20 A That was the old front office prior to us getting the
21 entire warehouse area. So now that we have this entire
22 warehouse, the front office has moved to this corner, which is
23 indicated as 18.

24 Q And is there anything in that building now?

25 A No.

1 Q Is there engineering in there?

2 A No.

3 Q Where is engineering located?

4 A Engineering is located in 14.

5 Q Was engineering ever in that building?

6 A They were temporarily in the building when flooring was
7 being installed in their office.

8 Q Okay.

9 HEARING OFFICER MEZA: On Employer Exhibit 1, maintenance
10 is number 13, maintenance shop?

11 THE WITNESS: Yes.

12 HEARING OFFICER MEZA: Okay.

13 Q BY MR. CANTORE: Now, packages that are delivered to 13,
14 the maintenance shop, is there a receiving door there? Some --
15 you know, someplace for receiving there?

16 A There's -- well, yes, receiving does take place there. So
17 there's -- there's a -- there's a gate where it gets received.

18 Q And who does the receiving there?

19 A David Gonzalez.

20 Q And what's his position?

21 A He is a contract employee.

22 Q In what department?

23 A In maintenance.

24 Q And his position with the -- what does he do for the
25 maintenance department?

1 A He receives. I'm not sure what other items he may be
2 doing.

3 Q Okay. Would it be fair to say that if it's anything more
4 than a UPS box or a FedEx box, it won't go over to maintenance?

5 A There are larger boxes that go, but -- we have large
6 deliveries from like Fastenal or Grainger. They'll go there.

7 Q What do -- what's Grainger?

8 A They are a supply company. So we can --

9 Q What --

10 A -- get anything from supplies for them -- from them.

11 Q Now, what types of deliveries are made at the maintenance
12 building? Is -- is it broken down, "This type of delivery has
13 to be made to area 17" -- or -- "12" -- rather --

14 A We --

15 Q -- "area 12, and this type of delivery has to be made to
16 building 13?"

17 A We try to break it down, but the carrier services aren't
18 always cooperative.

19 Q What do you try to break it down into?

20 A So we try to have the raw materials only go to the 12
21 area, but sometimes they end up going to labels and stuff in
22 the 13 area.

23 Q And what do you try to have go only to 13?

24 A Thirteen will be supplies and other items that are not raw
25 material but they're still for packaging, because they will be

1 stored in the packaging cage that's in 14. So there's three
2 cages in 14 for the --

3 Q Okay. And from time to time somebody from receiving will
4 go over to that cage, empty the cage and bring it to --

5 A Yes.

6 Q -- receiving? Are engineers designated as level II
7 supervisors?

8 A I don't know what their titles are offhand.

9 Q Okay. But you supervise the whole plant, don't you?

10 A I supervise the packaging, shipping, receiving and
11 terminal. Not the whole plant.

12 Q Okay. Let's see now. By the way, where do the terminal
13 employees park their vehicles if they drive to work?

14 A It depends on what time they get here. So if you get here
15 early enough, they would park -- there's a parking area that's
16 just within the gate line. But that would be pretty much taken
17 up by 8 a.m. So then there's more parking that follows along
18 the outside of the gate line.

19 MR. TOPOLSKI: Could you tell us by using the numbers on
20 Employer's Exhibit 1 --

21 HEARING OFFICER MEZA: Uh-huh.

22 MR. TOPOLSKI: -- where you're pointing to so the record's
23 clear?

24 THE WITNESS: Six would probably be the closest to the
25 inside gate line parking area.

1 Q BY MR. CANTORE: Between 13 and six?

2 A Yeah. Around in there.

3 Q Okay.

4 A And then there's more parking along -- 15 area is kind of
5 a little more desirable then because then there's another
6 walkway here that's -- you can get to.

7 HEARING OFFICER MEZA: Oh, okay.

8 THE WITNESS: And then if not, 13 across where that
9 building is by the ramp, there's more parking there. And then
10 there's parking across the way. So it's -- we have a lot of
11 contractors and it gets to the point where you kind of get --
12 park where you can --

13 MR. CANTORE: Okay.

14 THE WITNESS: -- if you're late enough.

15 Q BY MR. CANTORE: The packaging, shipping and receiving
16 employees, where do they park?

17 A They usually park closer to the warehouse area. So
18 there's parking -- you can't quite really see it in this
19 picture because of the angle --

20 Q Well, maybe I could help.

21 MR. CANTORE: I'd like this marked as Petitioner's
22 Exhibit 2.

23 HEARING OFFICER MEZA: Okay.

24 MR. CANTORE: All of which I will represent I downloaded
25 from Google.

1 MR. TOPOLSKI: A highly unreliable source.

2 MR. CANTORE: Probably, but --

3 **(Petitioner Exhibit Number 2 Marked for Identification)**

4 Q BY MR. CANTORE: Now I have on this, on the -- the last
5 page is a picture very similar to the one in Employer's
6 Exhibit 1. But one -- the first and second page are first a
7 map version and then a satellite version of the plant. Do you
8 see that?

9 A Yes.

10 Q Okay. So where would -- on this picture, the plant is in
11 the center right-hand side of the second page, correct?

12 A I'm sorry. You're on page 2?

13 Q Page 2.

14 A So the plant is center -- yes, off to the right.

15 Q Okay. On this picture, where would the employees for
16 production be --

17 A So --

18 Q -- be?

19 A -- generally the parking is along this -- I don't know how
20 to explain it -- this building here. So if it --

21 Q Between the --

22 HEARING OFFICER MEZA: Yeah.

23 Q BY MR. CANTORE: Between the packaging plant and the
24 building to its right?

25 A Yes.

1 Q There's parking there?

2 A Along the corner. Yeah, along the top corner or,
3 dependent upon which area, there's a doorway there that the
4 employees go through. Then there's more parking that is along
5 the -- our building on the south side. So if you're looking at
6 this paper as the top being north, the south side, there's more
7 parking there as well.

8 Q By that, there are two buildings sitting somewhat catty-
9 corner that are long gray lines --

10 A Yes.

11 Q -- by them?

12 A Yes.

13 Q Okay.

14 A There's some parking off to the right corner. Usually not
15 as desirable, because the way the trucks turn, it's kind of not
16 the best place to park.

17 Q Okay. Would it be fair to say that the packaging,
18 shipping and receiving park together but they don't park with
19 the terminal, lab --

20 A The --

21 Q -- maintenance?

22 A The shipping department doesn't usually park with --
23 park -- they park closer to this corner here.

24 MR. TOPOLSKI: When you say, "this corner here," you've got
25 to be more specific.

1 Q BY MR. CANTORE: The left-hand side of the building?

2 A The south -- yeah. Southwest corner. Packaging will park
3 more of the northeast corner --

4 Q Okay.

5 A -- and then the terminal would park in the --

6 HEARING OFFICER MEZA: In the what?

7 THE WITNESS: In the area we spoke of. From here, it would
8 be more northern.

9 HEARING OFFICER MEZA: Okay. And the northern corner on --

10 THE WITNESS: The northern -- just across there's another
11 warehouse from the right-hand side up one north. There is
12 parking there.

13 HEARING OFFICER MEZA: Okay. By area six, by number six,
14 on Employer's Exhibit 1?

15 THE WITNESS: By area -- for terminal, area six, 15 or 13.
16 There's not a lot by area six. So that gets filled pretty
17 quick. And then --

18 HEARING OFFICER MEZA: Okay.

19 MR. CANTORE: I would offer P-2, Petitioner's Exhibit 2.

20 MR. TOPOLSKI: No objection.

21 HEARING OFFICER MEZA: Okay. So hearing no objection with
22 respect to Petitioner's Exhibit 2, Petitioner's Exhibit 2 is
23 hereby received into evidence.

24 **(Petitioner Exhibit Number 2 Received into Evidence)**

25 Q BY MR. CANTORE: By the way, right now you're supervising

- 1 quite a few employees, correct?
- 2 A Yes.
- 3 Q Do you get to actually observe how all those employees are
- 4 working on a daily basis?
- 5 A Every single employee?
- 6 Q Yeah.
- 7 A No.
- 8 Q Most of them?
- 9 A Most of them, yes.
- 10 Q Do you spend most of your time in your office or out of
- 11 your office?
- 12 A I try to spend the majority of my time out of my office.
- 13 Q And visiting all over the facilities?
- 14 A Yes.
- 15 Q Do you ever get into the area of 18?
- 16 A Yes.
- 17 Q Okay. How about two?
- 18 A Yes. I was there --
- 19 Q Six?
- 20 A -- last week. Yes.
- 21 Q You were there last week?
- 22 A I was actually there -- yeah.
- 23 Q How often are you over at six?
- 24 A I was there twice last week.
- 25 Q Okay. Seventeen?

- 1 A Let's see. I was there a couple of times last week.
- 2 Q Okay.
- 3 A I was there yesterday.
- 4 Q And how about in nine?
- 5 A Nine? I'm there as well a few times --
- 6 Q How often?
- 7 A How often am I in nine?
- 8 Q Yeah.
- 9 A Daily. I try to get there daily.
- 10 Q Because you have --
- 11 A In some area.
- 12 Q -- to walk through, for the most part, to get anywhere
- 13 else, right?
- 14 A Not really. I don't have to walk through to get to
- 15 anywhere else. It's -- the walkways are along the building
- 16 primarily for safety reasons, because forklift traffic is
- 17 throughout the area.
- 18 Q Okay.
- 19 A So to get there, you'd have to cross forklift traffic.
- 20 Q So is it your testimony that between you and the
- 21 employees, all these employees on Petitioner's -- Employer's
- 22 Exhibit 2, there are no middle-level supervisors, lower-level
- 23 supervisors?
- 24 A On this paperwork, no.
- 25 Q So you are the first-level supervisor for all the people

- 1 on this list?
- 2 A Not everyone on this list. There are people --
- 3 Q Other than the quality control and the mechanics?
- 4 A The Vernon people, I have excluded as well.
- 5 Q Well, they'll be coming to your plant in a --
- 6 A Yeah.
- 7 Q -- couple of months, so --
- 8 A And -- and, actually, Carlos Alban, I do not supervise him
- 9 directly.
- 10 Q Who's Carlos?
- 11 A Carlos Alban?
- 12 Q Yeah. I don't even see him on the list. Where -- where
- 13 he's --
- 14 A He's in the receiving area, the first one.
- 15 Q And why don't you supervise him?
- 16 A He's supervised by Mark Foster.
- 17 Q Who's Mark Foster?
- 18 A He's the purchasing -- I don't know his exact title.
- 19 Q Okay.
- 20 A But he's not -- he's not in our location.
- 21 Q Anyone else on the list you don't supervise?
- 22 A Kimberly Cruz.
- 23 Q Who supervises her?
- 24 A The engineering department. I believe Wes Babiere's her
- 25 direct supervisor.

1 Q Do you have any openings in the lab?

2 A We have the manage -- TC manager open.

3 Q Okay. Hypothetically speaking, let's assume that Jason

4 Dong --

5 A Duong.

6 Q -- Duong gets married and runs away to Italy, the greatest
7 country in the world --

8 MR. TOPOLSKI: Objection to that characterization.

9 MR. CANTORE: Only two types of people in the world;
10 Italians and those who wish they were. But go -- we'll go on.
11 I digress.

12 Q BY MR. CANTORE: If -- if Jason were to quit tomorrow
13 because he left for Italy, what qualifications are necessary
14 for a job in quality control? Are there?

15 A I'm sure there are, but I'm not familiar with all the
16 qualifications required.

17 Q Any particular level of education?

18 A I don't know offhand.

19 Q Any particular skill sets?

20 A I -- I don't know offhand. I'm not familiar enough with
21 the department that I could --

22 Q Okay. What about maintenance, any skill sets in the
23 maintenance employees?

24 A Also, I -- I don't know what the requirements are for that
25 area as well.

1 Q Now, correct me if I'm wrong, the really entry-level jobs
2 in packaging are all filled by temporary employees; is that
3 correct?

4 A Yes.

5 Q And eventually they learn skills? They're trained on the
6 various machines, the various lines, the various jobs, and
7 maybe even trained on a forklift, something like that; is that
8 correct?

9 A We don't train on the forklift, but the lines, yes.

10 Q Okay. And then sometimes they are then made permanent
11 employees, correct?

12 A Yes.

13 Q Okay. Who recommends the temporary employees to be put
14 into the permanent jobs?

15 A I will see how their performance is and then they will
16 be --

17 Q You mean you'll stand over them 40 hours a week?

18 A No. I can -- you can -- so like our five-quart line, it
19 runs as fast as our -- it's a manual line. So it runs as fast
20 as our slowest person. So you can easily tell if someone is
21 not going to work out on the line.

22 Q Well, if there are three people on the line -- how many
23 people are on a line at any one time?

24 A There are five people on that line.

25 Q And it only runs as fast as the -- as the slowest person

1 on the line, correct?

2 A Yes.

3 Q Five people on the line; how do you know which one's
4 slowing down the line? I appreciate that you can tell that the
5 line is now slow, but how do you know who is slowing down the
6 line? Don't you ask the lead?

7 A Do I ask the lead if the line is slowing down? I --

8 Q Who -- who's the slow one on the line. Don't you ask the
9 lead that?

10 A The filler operator would actually be the one who would
11 know, and I would speak with them. So usually I speak with the
12 filler operator on the line, who's --

13 Q You never speak to the leads about the employees?

14 A I speak to the leads as well, but the filler operator
15 would have a more -- they would know more about how the line
16 is, who would be not working out.

17 Q Every line has a filler?

18 A Yes.

19 Q Okay. Now, is the filler the same as a reliever?

20 A I'm sorry?

21 Q I think we used the word reliever. A reliever is someone
22 who can do all the jobs and even fill in for the leads,
23 correct?

24 A Yes, that is --

25 Q So is a filler the same as a reliever or are they

1 different types of people?

2 A It is a different position.

3 Q Okay. Every line has a filler?

4 A There's a filler on every line, yes. There's not a filler
5 operate our every line, but there is a filler on every line.

6 Q And how many relievers are there?

7 A Currently there's two.

8 Q Okay. So you would speak to the filler and not either the
9 reliever or the lead?

10 A No. I would speak to the reliever and the lead as well,
11 but I would also speak to the filler.

12 Q Okay. And whose opinion of employees do you take --

13 A It's --

14 Q -- the most serious, the relievers -- no, no -- the
15 fillers? Is that the person --

16 A No. It depends on the line. For the five-quart, I would
17 talk to the fillers more, dependent upon the line and the area
18 that's being performed. And let's just say even put-away, I
19 would get information from shipping because they would let me
20 know that there are errors that are being done, that things are
21 not being properly licensed, properly -- or put away correctly.
22 So I would get information from more than just one person.

23 Q Do leads ever make recommendations for transfers, position
24 transfers from say, you know, from one line to another line,
25 from some -- one end of the machine to the other end of the

1 machine, promotions, if it involves a promotion? Do the leads
2 ever make those recommendations?

3 A Promotions, no. But for cross-training, yes.

4 Q Employees do make those recommendations?

5 A They will recommend, yes.

6 Q Who directs the actual work for the day --

7 A The --

8 Q -- "You do this, you do that?"

9 A It's pretty much set where the people are going to be at.
10 So they are -- it's a self-starting crew. They already know
11 what to do when they come in during the day.

12 Q Who schedules for the weekends?

13 A Schedules the line? Kelli schedules the line.

14 Q Schedule the employees to come in on the weekend.

15 A The leads will go and speak with their employees to see
16 who's available, and then we will schedule.

17 Q And if nobody's available -- no volunteers?

18 A Well, if it's -- if it's not a scheduled run, then I will
19 put out a posting that we're running scheduled -- you know, how
20 many lines and we try to put that out to everybody. But if
21 it's something where it's an emergency and we don't have --
22 give enough notice, then we will ask.

23 HEARING OFFICER MEZA: Okay. And let's just be clear that
24 when we're talking about the leads, we're talking about the
25 packaging leads and the shipping leads.

1 THE WITNESS: Yes.

2 HEARING OFFICER MEZA: Correct? All right.

3 Q BY MR. CANTORE: Who delegates the work among the three,
4 four, five employees on a particular line?

5 A The -- it depends on where they're at that kind of
6 dictates what the workload is. If they're on the depalletizer,
7 then that's what they're going to concentrate on; if they are a
8 filler operator, that's what they're going to concentrate on;
9 if they're a put-away, then that's what they're going to
10 concentrate on.

11 Q So when you say there are five people on the line, you're
12 talking about one put-away --

13 A Oh, that -- the five-quart line has five. And that is
14 rotated. The areas are rotated because it's so manual to --
15 for -- so that someone is not constantly doing the same
16 movements, they rotate through.

17 Q Okay. And who oversees the rotation?

18 A The filler operator primarily does. And it's just --

19 Q How about the lead?

20 A -- it's a time -- it's a time thing so that we're not
21 doing it for the same amount of time.

22 Q And then the shipping department, who does that?

23 A Who does what? I'm sorry.

24 Q Who -- is there anybody directing the work in the shipping
25 department who -- who's telling this forklift driver to fill

1 that truck and this forklift truckdriver to -- to fill that
2 truck?

3 A When the trucks are checked in, the paperwork is put on a
4 magnet board in the order that the trucks are received, and
5 then the loaders will come in when they're done, they'll give
6 them the paperwork and they'll go to the board to pull the next
7 one.

8 Q So who decides --

9 A So there's -- there's kind of a process to it.

10 Q I'm sorry?

11 A There's a process. It's not -- it's not dictated by a
12 person. There's a -- you get the paperwork, you print the pick
13 list, you put it on the board and then they come in and --
14 they're put up in order.

15 Q So these employees are basically unsupervised? You're --

16 A No. They're supervised.

17 Q Who does it at night on the second shift?

18 A There's no second shift shipping, if you're referring to
19 shipping. But --

20 Q Who supervises the packaging on the second shift?

21 A Well, when I'm there, I supervise them.

22 Q But you're a day-shift employee, correct?

23 A Technically I'm a day-shift employee, but I work through
24 second shift.

25 Q You work, what, 24 hours a day?

- 1 A No, but I work through --
- 2 Q Eighteen?
- 3 A Twelve usually.
- 4 Q Twelve?
- 5 A Yes.
- 6 Q So who supervises the employees either on the day shift
- 7 before you get to work or the second shift after you've left
- 8 work? Who supervises those employees?
- 9 A So, technically, there's no supervisor on shift during
- 10 that time period.
- 11 Q Not even the leads?
- 12 A There is a lead there to monitor everything that is going
- 13 on, but there is no --
- 14 Q All right.
- 15 A -- supervisor there.
- 16 Q If something happened on the second shift after you had
- 17 left, a fight broke out, who would be in charge of fixing that,
- 18 stopping the fight, discharging the employee or at least making
- 19 sure he gets off the premises so that -- calling the cops, who
- 20 is -- who would do all that?
- 21 A Well, I would be called if we had a fight. So the lead
- 22 would call me.
- 23 Q And what -- and so the two employees would continue to
- 24 fight until you got there?
- 25 A No, they wouldn't continue to fight. I imagine --

1 Q Who would stop the fight?

2 A I imagine the people on the line would stop the fight. I
3 don't think that the crew would stand and watch people fight.

4 Q I don't know. They pay a lot of money for that in Vegas.
5 But who would -- who would call you? The lead would call
6 you?

7 A Yes.

8 Q And you would tell them what to do?

9 A Yes, or I'd come in.

10 Q Would he send anybody home, the lead, the two fighters
11 home, or something like that --

12 A If I --

13 Q -- until you got there or --

14 A If I instructed him to, he would send them home.

15 Q Who do the employees perceive as their supervision?

16 A I can't speculate as to what someone else perceives, but
17 they know that I am their supervisor.

18 Q And they don't think their leads are?

19 A I can't answer for other people.

20 Q Okay.

21 MR. CANTORE: I have nothing further.

22 HEARING OFFICER MEZA: Okay. I actually just have a
23 question for counsel, both sides, actually.

24 Okay. Are Jaime Sedano, Rafael Rodriguez, Steve Lim, Ray
25 Ramirez, are they going to be called as witnesses today?

1 MR. CANTORE: No.

2 HEARING OFFICER MEZA: No?

3 MR. TOPOLSKI: No.

4 HEARING OFFICER MEZA: No. Okay. All right. Then --
5 let's see.

6 Okay. Do you have any questions on redirect?

7 MR. TOPOLSKI: I just have a couple.

8 HEARING OFFICER MEZA: You have a couple. Okay. Go ahead.

9 I'll -- I probably will have some questions for her after then.
10 Go ahead.

11 **REDIRECT EXAMINATION**

12 Q BY MR. TOPOLSKI: You mentioned that there were no
13 transfers from terminal to packaging, correct?

14 A Not that I can think of offhand.

15 Q Which job pays more?

16 A Which jobs pays more in --

17 Q Jobs in terminal or jobs in packaging?

18 A It depends on where you're working.

19 Q Is terminal perceived as a more advanced job than
20 packaging?

21 A I -- it can be. I don't -- it would depend on the person.
22 I mean some people would prefer not to work in the terminal and
23 some people would prefer not to work in packaging. It would
24 depend on an individual.

25 Q Okay. Do the leads ever take the samples from the votator

1 operator to the lab?

2 A I don't know offhand that they would take the sample.

3 They may take a tank sample, but I don't believe they know how

4 to do the viscosity test.

5 Q But you know -- you do know that the votator operators

6 take their samples at least daily, if not more often, correct?

7 A Yes. They have to do the viscosity test.

8 Q Just so we're clear, what does the filler do on the line?

9 A The equipment or the person?

10 Q You said that they -- there was some confusion as to the

11 difference between a reliever and a filler or a filler

12 operator. If you could clarify that for the record, that would

13 be very helpful.

14 A The -- the reliever can relieve different areas, whether

15 it's the filler, a put-away, depalletizer or for different

16 lines. The filler concentrates on the filling equipment and

17 the paperwork that's involved.

18 Q Is there designated parking for anybody anywhere in the --

19 at the facility?

20 A No. I -- you just kind of -- you get the best parking you

21 can get when you get there.

22 MR. TOPOLSKI: I don't have any other questions I don't

23 think.

24 MR. CANTORE: I have one question.

25 HEARING OFFICER MEZA: Okay.

RECROSS-EXAMINATION

1

2 Q BY MR. CANTORE: You mentioned Mr. Lim goes into the
3 packaging area and pulls some kind of paperwork. I've
4 forgotten what that paperwork is. Can you tell me what that
5 is?

6 A They're the production sheets. So we have weight checks
7 that have to be done and gradient checks and all that stuff
8 gets stored. Those paperwork items get stored in the lab.

9 Q And how often does he do that?

10 A So the paperwork -- so I know that they used to go once a
11 shift before on third shift. I don't know that they're going
12 once a shift anymore on third shift, but they're coming to get
13 the paperwork.

14 Q About once a week?

15 A At least once a week, yeah.

16 MR. CANTORE: Nothing further.

17 HEARING OFFICER MEZA: Okay. All right. So I have -- I
18 have some questions.

19 Okay. In terms of distance between the buildings and just
20 the size of the facility, do you know how big this facility is?
21 Like --

22 THE WITNESS: I --

23 HEARING OFFICER MEZA: -- square feet, anything like that?

24 THE WITNESS: I don't know offhand, no.

25 HEARING OFFICER MEZA: You have no idea on the footage?

1 THE WITNESS: Huh-uh.

2 HEARING OFFICER MEZA: Okay. The distance between building
3 13 and 14, do you know what that is?

4 THE WITNESS: It's probably about, from corner to corner,
5 maybe 15 feet.

6 HEARING OFFICER MEZA: Okay. The distance between building
7 14 to building 15?

8 THE WITNESS: That is maybe 20 to 25.

9 HEARING OFFICER MEZA: Feet?

10 THE WITNESS: Feet, yes.

11 HEARING OFFICER MEZA: Okay. And between building 15 and
12 13?

13 THE WITNESS: That's probably about -- from corner to
14 corner, it's probably about 18 feet maybe.

15 HEARING OFFICER MEZA: Okay. And just so the record's
16 clear, we just talked about the maintenance shop, the terminal
17 building and the lab, correct?

18 THE WITNESS: Yes.

19 HEARING OFFICER MEZA: Okay. And by the numbers, I'm
20 referring to the numbers on Employer's Exhibit 1.

21 And then the distance, what's the distance between the
22 terminal building, number 14, on Employer's Exhibit 1, and the
23 packaging department?

24 THE WITNESS: That is probably maybe 40 feet.

25 HEARING OFFICER MEZA: Okay.

1 THE WITNESS: Maybe 50.

2 HEARING OFFICER MEZA: About how long would it take you to
3 walk over?

4 THE WITNESS: Oh, it doesn't take long. There's a walkway
5 that's put in.

6 HEARING OFFICER MEZA: Okay.

7 THE WITNESS: There's a pathway that's in the fence line to
8 walk from building to building.

9 HEARING OFFICER MEZA: Oh, okay. So that's how you would
10 get there, you would walk there?

11 THE WITNESS: Yeah. There's an actual path that was put in
12 in the fence line to get there --

13 HEARING OFFICER MEZA: Okay.

14 THE WITNESS: -- back and forth.

15 HEARING OFFICER MEZA: Okay. And, let's see -- and that's
16 generally how you get around, you walk from one place to the
17 other --

18 THE WITNESS: You walk or we actually have three-wheeled
19 bikes that will also fit on that pathway.

20 HEARING OFFICER MEZA: Okay. All right. Now, in terms of
21 the wages -- in terms of wages of the employees that -- we're
22 just going to go -- I'm just going to go down on the list on
23 Employer's Exhibit 2. For the maintenance employees, do you
24 know what their approximate wages are? Approximately how much
25 they make? Is it per hour? Do you have any --

1 THE WITNESS: I --

2 HEARING OFFICER MEZA: -- idea?

3 THE WITNESS: I don't. I wouldn't --

4 HEARING OFFICER MEZA: Okay. Packaging employees, do you
5 know what the wage range is for those individuals?

6 THE WITNESS: Roughly I do.

7 HEARING OFFICER MEZA: What is it?

8 THE WITNESS: It's anywhere from maybe like --

9 HEARING OFFICER MEZA: And please don't guess. Just
10 whatever -- if you know, just tell us, you know, approximately
11 what they make.

12 THE WITNESS: Well, I would -- honestly, I would be
13 guessing. I can give you a rough estimate or I don't know if
14 it's better to wait for when --

15 HEARING OFFICER MEZA: Will somebody be testifying about
16 that?

17 MR. TOPOLSKI: I have somebody who's going to generally
18 testify as to the wages. I don't know if will get as specific
19 as you would like.

20 HEARING OFFICER MEZA: Okay. Okay.

21 All right. Well, what -- what do you think they make, I
22 mean, based on your knowledge? I mean if you're -- if it's a
23 complete guess and you're just making this -- you know, you
24 have no idea or there's no, you know, specific reason as to why
25 you think, then just say that you don't know.

1 THE WITNESS: I could give you like a rough estimate, but I
2 don't --

3 HEARING OFFICER MEZA: Okay.

4 THE WITNESS: Like between 15 to 19.

5 HEARING OFFICER MEZA: Per hour?

6 THE WITNESS: Yes.

7 HEARING OFFICER MEZA: The receiving employees?

8 THE WITNESS: They would fall -- would be in the same
9 ballpark.

10 HEARING OFFICER MEZA: Fifteen to 19 per hour?

11 THE WITNESS: Yeah.

12 HEARING OFFICER MEZA: Terminal employees?

13 THE WITNESS: Same.

14 HEARING OFFICER MEZA: Fifteen to 19 per hour?

15 THE WITNESS: Uh-huh.

16 HEARING OFFICER MEZA: Shipping employees?

17 THE WITNESS: I think they're -- yeah, they're within the
18 same.

19 HEARING OFFICER MEZA: Fifteen to 19 per hour?

20 THE WITNESS: Uh-huh.

21 HEARING OFFICER MEZA: Okay. And in terms of the benefits,
22 for these same employees, the maintenance employees, do you
23 know what kind of benefits they get?

24 THE WITNESS: Everyone gets the same benefits.

25 HEARING OFFICER MEZA: The same benefits?

1 THE WITNESS: Yes.

2 HEARING OFFICER MEZA: Okay. So they all have the same
3 type of -- what do the benefits consist of? Is it health
4 insurance and --

5 THE WITNESS: Yeah. Medical, dental, vision, 401K.

6 HEARING OFFICER MEZA: Okay. So they all have the same
7 benefits package; the maintenance, the packaging, the
8 receiving, the terminal, the shipping. And do you know if the
9 quality --

10 THE WITNESS: Yeah.

11 HEARING OFFICER MEZA: -- control -- all the same?

12 THE WITNESS: Uh-huh.

13 HEARING OFFICER MEZA: Okay. The skill level for the
14 packaging employees, do you know what that is? Is there any
15 requirement that they need in order to perform that function?

16 THE WITNESS: If it's a forklift operator, they have to be
17 able to drive a forklift.

18 HEARING OFFICER MEZA: So they need some sort of
19 certification?

20 THE WITNESS: Coming in, yes, they -- and then --

21 HEARING OFFICER MEZA: Okay.

22 THE WITNESS: -- we do our own certification as well.

23 HEARING OFFICER MEZA: Okay. Anything else?

24 MR. CANTORE: California requires the certification for any
25 forklift operators --

1 HEARING OFFICER MEZA: Right.

2 MR. CANTORE: -- health --

3 HEARING OFFICER MEZA: Any --

4 MR. CANTORE: -- and safety.

5 HEARING OFFICER MEZA: Right. Anything else? Any other

6 type of skill they need?

7 THE WITNESS: The -- all lead technicians are required to

8 have a mechanical background.

9 HEARING OFFICER MEZA: Okay. What about maintenance, do

10 you know if they have any specific --

11 THE WITNESS: I --

12 HEARING OFFICER MEZA: -- skills?

13 THE WITNESS: I couldn't speak to maintenance, what would

14 be required.

15 HEARING OFFICER MEZA: Receiving?

16 THE WITNESS: Receiving, they would have to be forklift

17 certified.

18 HEARING OFFICER MEZA: Okay. Terminal?

19 THE WITNESS: They are all forklift certified as well.

20 HEARING OFFICER MEZA: Shipping?

21 THE WITNESS: Forklift certified.

22 HEARING OFFICER MEZA: Okay. So that would be the skill

23 that would be required?

24 THE WITNESS: That's the only thing --

25 HEARING OFFICER MEZA: With special training?

1 THE WITNESS: -- I can think of offhand --

2 HEARING OFFICER MEZA: Okay.

3 THE WITNESS: -- yeah.

4 HEARING OFFICER MEZA: Quality?

5 THE WITNESS: That I don't know what --

6 HEARING OFFICER MEZA: Okay.

7 THE WITNESS: -- those requirements are.

8 HEARING OFFICER MEZA: All right. Now, in terms of the
9 individuals that are alleged to be supervisors, who are Jaime
10 Sedano, Rafael Rodriguez, Steve Lim and Ray Ramirez, to your
11 knowledge, do they or have they ever hired any individuals,
12 transferred any individuals, suspended or disciplined any
13 individuals, laid off or re-called any individuals, promoted
14 any employees, adjusted any employees' grievances, discharged
15 any employees, to your --

16 THE WITNESS: To my knowledge --

17 HEARING OFFICER MEZA: -- knowledge have they?

18 THE WITNESS: -- no.

19 HEARING OFFICER MEZA: What about assigned specific work to
20 any individuals?

21 THE WITNESS: Assigned specific, yes, they've assigned
22 specific duties.

23 HEARING OFFICER MEZA: Okay. Who? Which --

24 THE WITNESS: So.

25 HEARING OFFICER MEZA: What are you talking about?

1 THE WITNESS: If we're going to maybe dump reprocessed oil,
2 they'll assign the task to do that.

3 HEARING OFFICER MEZA: Who? We're talking about four
4 different individuals. So who are you --

5 THE WITNESS: So --

6 HEARING OFFICER MEZA: -- talking about?

7 THE WITNESS: -- the leads on packaging.

8 HEARING OFFICER MEZA: Okay. The packaging leads are who?

9 THE WITNESS: Jaime Sedano and Rafael Rodriguez.

10 HEARING OFFICER MEZA: Okay. All right. And what about
11 Ray Ramirez?

12 THE WITNESS: Yes, he would assign the task for cycle
13 counting. He'll pass out sheets and --

14 HEARING OFFICER MEZA: You said cycle counting?

15 THE WITNESS: Yep.

16 HEARING OFFICER MEZA: What is that?

17 THE WITNESS: When we check the inventory to our system to
18 ensure that the physical inventory is the same as the system.

19 HEARING OFFICER MEZA: So he would assign someone to do
20 that?

21 THE WITNESS: He would -- yeah, he would put the paperwork
22 together and --

23 HEARING OFFICER MEZA: Uh-huh.

24 THE WITNESS: -- which areas to go count.

25 HEARING OFFICER MEZA: Okay. And is that a daily thing or

1 weekly thing or how often does that happen?

2 THE WITNESS: That we usually do for month end. We try and
3 get balanced.

4 HEARING OFFICER MEZA: Uh-huh.

5 THE WITNESS: And then if it's needed for -- if there's a
6 concern.

7 HEARING OFFICER MEZA: Okay. And does he just determine
8 when it's need it or is it something that's set by the
9 facility?

10 THE WITNESS: We can see when it's needed from Kelli's
11 schedule and our system --

12 HEARING OFFICER MEZA: Okay.

13 THE WITNESS: -- and then there -- there may be something
14 that he sees as well.

15 HEARING OFFICER MEZA: Okay. So -- okay. And then do you
16 know about Steve Lim, do you know if he assigns work or do you
17 know anything about --

18 THE WITNESS: I don't --

19 HEARING OFFICER MEZA: -- what he does?

20 THE WITNESS: I don't know about the lab.

21 HEARING OFFICER MEZA: So you have no information on him?

22 THE WITNESS: Not on the lab, no.

23 HEARING OFFICER MEZA: You don't know if he does any of
24 these things that I just asked you?

25 THE WITNESS: No --

1 HEARING OFFICER MEZA: Okay.

2 THE WITNESS: -- not on the lab, I do not know.

3 HEARING OFFICER MEZA: Okay. So you -- with respect to the
4 information you provided, it actually just pertains to Jaime
5 Sedano, Rafael Rodriguez and Ray Ramirez --

6 THE WITNESS: Yes.

7 HEARING OFFICER MEZA: -- correct? Okay. And -- okay. I
8 have no further questions.

9 Have any of my questions prompted any questions?

10 MR. TOPOLSKI: Yeah.

11 **FURTHER REDIRECT EXAMINATION**

12 Q BY MR. TOPOLSKI: I'm not sure exactly what you mean by
13 assigned work. Let me talk about Ramirez first. What exactly
14 does he assign?

15 A So when we do cycle counts, he'll assign --

16 Q What's a cycle count?

17 A You verify the physical inventory. You go out -- you'll
18 have a paper -- a sheet that will tell you how much our system
19 says and we'll go out and physically check it to -- to the
20 system.

21 Q And that's Ramirez?

22 A Yes.

23 Q Now, here doesn't -- he doesn't decide when a cycle count
24 is done, does he?

25 A He can decide to do a cycle count if he thinks that there

1 is an issue with the inventory.

2 Q But who decides basically when the cycle counts are done?

3 A We usually do cycle counts at month end.

4 Q When?

5 A Month end --

6 Q Okay.

7 A -- for accounting purposes.

8 Q Okay. So that's something that's regularly scheduled,
9 right?

10 A Yes.

11 Q All right. Does he do -- he doesn't assign any other kind
12 of work?

13 A He may assign to maybe like move product in the warehouse
14 from one area to another or stuff like -- something similar to
15 that.

16 Q What about Sedano, does he do -- does he assign any work?

17 A The dumping that I had spoke of, maybe just dumping
18 assignments if we're going -- with the contract employees, we
19 have to rework the product. But the regular work duties are
20 pretty much -- are lined out, so it's not --

21 Q Again, the same would be true with the other packaging
22 lead, correct?

23 A Yes.

24 MR. TOPOLSKI: All right. I don't have any further
25 questions.

1 HEARING OFFICER MEZA: Okay. And I actually do have a
2 couple more questions.

3 Do these employees, maintenance, packaging, receiving,
4 terminal, shipping, do they clock in?

5 THE WITNESS: Yes.

6 HEARING OFFICER MEZA: Okay. So they all clock in. Do
7 they use the same time clock?

8 THE WITNESS: No. There's four different time clocks
9 available through the facility.

10 HEARING OFFICER MEZA: Okay. Who uses what time clocks?
11 How do you determine what time clock you're supposed to go to
12 or can you --

13 THE WITNESS: You can go to --

14 HEARING OFFICER MEZA: -- go to any time clock?

15 THE WITNESS: -- any time clock.

16 HEARING OFFICER MEZA: Okay.

17 THE WITNESS: So it's more --

18 HEARING OFFICER MEZA: Okay.

19 THE WITNESS: -- a convenience.

20 HEARING OFFICER MEZA: So they use all same -- the same
21 four time clocks to clock in?

22 THE WITNESS: Yeah. So it's a --

23 HEARING OFFICER MEZA: Okay.

24 THE WITNESS: -- where they -- where it's convenient for
25 them, they will clock in.

1 HEARING OFFICER MEZA: Okay.

2 MR. CANTORE: Can you ask her where the time clocks are
3 located?

4 HEARING OFFICER MEZA: Where are the time clocks located?

5 THE WITNESS: They are -- there's one in 14, there's one by
6 16, the number 16, and then if you kind of follow that north,
7 there's another one there where that 16 kind of line goes up
8 north.

9 HEARING OFFICER MEZA: Uh-huh.

10 THE WITNESS: And then there's one by 18.

11 HEARING OFFICER MEZA: Okay. And then the numbers you're
12 pointing out to, again just for clarification purposes, are on
13 Employer's Exhibit 1, correct?

14 THE WITNESS: Yes.

15 HEARING OFFICER MEZA: Okay. Do you know where the -- do
16 you know where the quality control employees clock in?

17 THE WITNESS: Usually at 14.

18 HEARING OFFICER MEZA: So they do clock in?

19 THE WITNESS: Yes.

20 HEARING OFFICER MEZA: You do know that for a fact?

21 THE WITNESS: Yes.

22 HEARING OFFICER MEZA: Okay. All right. Now, in terms of
23 your position as -- you said that you're the supervisor of the
24 packaging employees, the receiving employees, the terminal
25 employees and shipping employees, correct?

1 THE WITNESS: Yes.

2 HEARING OFFICER MEZA: Okay. Do you discipline these
3 individuals or have the authority to discipline them?

4 THE WITNESS: Yes.

5 HEARING OFFICER MEZA: Okay. And do you approve vacation
6 requests for them?

7 THE WITNESS: Yes.

8 HEARING OFFICER MEZA: Okay. Are you involved in hiring --

9 THE WITNESS: Yes.

10 HEARING OFFICER MEZA: -- any of these individuals in
11 these -- in maintenance? Do you hire anyone in maintenance?

12 THE WITNESS: No, I don't.

13 HEARING OFFICER MEZA: Or have you?

14 THE WITNESS: I don't hire anyone in maintenance, no.

15 HEARING OFFICER MEZA: Okay. But you hire and have hired
16 individuals in packaging?

17 THE WITNESS: Yes.

18 HEARING OFFICER MEZA: Okay. And receiving?

19 THE WITNESS: Yes.

20 HEARING OFFICER MEZA: Okay. Terminal and shipping?

21 THE WITNESS: Yes.

22 HEARING OFFICER MEZA: Okay. And do you have the authority
23 to transfer some of these individuals from one department to
24 another?

25 THE WITNESS: No.

1 HEARING OFFICER MEZA: Okay.

2 THE WITNESS: That would be a plant manager.

3 HEARING OFFICER MEZA: Okay. And if one of these
4 individuals comes to you from packaging, from receiving, from
5 terminal or from shipping and has a problem, is that something
6 that you can try to resolve for them or have resolved for any
7 of these individuals in any of these --

8 THE WITNESS: Yes.

9 HEARING OFFICER MEZA: Okay. All right. In any of those
10 departments?

11 Okay. I have no further questions. Do you gentlemen have
12 any questions?

13 MR. CANTORE: I do.

14 HEARING OFFICER MEZA: Okay.

15 **FURTHER RECROSS-EXAMINATION**

16 Q BY MR. CANTORE: In terms of -- do your customers ever
17 change their orders?

18 A Yes.

19 Q Change the priority of the orders?

20 A The customers change the priority in orders?

21 Q Yeah. "I needed the ten-gallon tanks. Now I need the 15-
22 gallon tanks. Can you get me the 15-gallon tanks?" Come on, I
23 worked my way through law school in the men's rag business. I
24 know how that goes. Don't they --

25 A Yeah.

- 1 Q -- change their orders --
- 2 A Well --
- 3 Q -- constantly, things like that?
- 4 A They do change orders, yes.
- 5 Q Okay. And when there's -- things have to be changed
- 6 around, who dictates that in the shipping department? Who gets
- 7 the orders out in the shipping department of which -- which
- 8 orders are going out next?
- 9 A So the CSRs will inform us of the requirements and they
- 10 have to be approved of anything that's moved up. So if it's
- 11 bulk or pack, it has to be approved first.
- 12 Q And then Ramirez goes around and tells the employees which
- 13 ones are being moved up, correct, and decides then to move it
- 14 up, right?
- 15 A No. Actually, Donna would probably be the more vocal
- 16 individual in the area to let them know --
- 17 Q Okay.
- 18 A -- because she's the -- she would schedule the truck to
- 19 come up and she would let them know.
- 20 Q Now, Carlos sitting here, what's his job?
- 21 A He's a purchaser.
- 22 Q Is that a recent --
- 23 HEARING OFFICER MEZA: What's his last name? What's his
- 24 last name?
- 25 Q BY MR. CANTORE: What's his last name?

- 1 A Oh, wait. I'm sorry. Yeah, there's two. You have two
2 behind you.
- 3 Q Okay. The purchaser?
- 4 A Carlos Alban?
- 5 Q Yes.
- 6 A Yes.
- 7 Q How long he has had that job?
- 8 A He has been purchasing -- I -- I was gone when he started
9 the role. I think it's been seven months. I -- that's just my
10 guess.
- 11 Q Do you have any idea how he got his job?
- 12 A How he got his job?
- 13 Q Uh-huh.
- 14 A I was not there when he was promoted to the job.
- 15 Q So if he testified that the lead recommended him for the
16 job and he got it, you would have no way of knowing whether
17 that was true or false? You weren't there, correct?
- 18 A Correct, I was not --
- 19 Q Okay.
- 20 A -- there at the time.
- 21 HEARING OFFICER MEZA: Any --
- 22 MR. CANTORE: Nothing further.
- 23 HEARING OFFICER MEZA: Any further questions?
- 24 MR. TOPOLSKI: Yeah, I just have one more question.
- 25 HEARING OFFICER MEZA: Okay.

1 MR. TOPOLSKI: Or one more series of questions and then I
2 think I'm done.

3 **FURTHER REDIRECT EXAMINATION**

4 Q BY MR. TOPOLSKI: Where's the HR office located?

5 A In 14.

6 Q All right. When your folks in shipping or receiving or
7 packaging need to go see someone from HR, where do they go?

8 A To building 14.

9 MR. TOPOLSKI: No further questions.

10 **FURTHER RECROSS-EXAMINATION**

11 Q BY MR. CANTORE: How long has HR been in building 14?

12 A HR's been in building 14 for -- let's see, I've been there
13 for eight years. It's been there the majority of eight years.
14 It moved for about seven months to a year approximately and
15 then it moved back again.

16 Q So at one point in time it was in the --

17 A It was in 18.

18 Q -- 18 area?

19 A Yes, it was.

20 Q And then they had to walk to 18 to see HR, right?

21 A Yes.

22 Q By the way, in terms of dropping off and receiving samples
23 at the lab, do you think the employees spend more time
24 interacting with the lab technicians than the receivers spend
25 with the truckers picking up the leads or dropping off the

1 loads?

2 A No, I don't think so.

3 MR. CANTORE: I have nothing further.

4 MR. TOPOLSKI: Well --

5 HEARING OFFICER MEZA: Okay. I have --

6 MR. TOPOLSKI: Okay. I've got one more too.

7 HEARING OFFICER MEZA: Oh. Go ahead.

8 MR. TOPOLSKI: And then --

9 HEARING OFFICER MEZA: Go ahead.

10 MR. TOPOLSKI: -- I'm definitely wrapped up.

11 HEARING OFFICER MEZA: Okay.

12 **FURTHER REDIRECT EXAMINATION**

13 Q BY MR. TOPOLSKI: We talked about HR moving, right?

14 A Yes.

15 Q Anybody else moving in the near future?

16 A Jesus is moving to 14.

17 HEARING OFFICER MEZA: What's Jesus' last name?

18 THE WITNESS: Jesus Valadez --

19 MR. TOPOLSKI: Plant manager.

20 THE WITNESS: -- is the plant manager.

21 MR. TOPOLSKI: Oh.

22 THE WITNESS: There is an area in the -- I think that's in
23 11, over by the shipping area. There's a small room to 11
24 area where maintenance is going to be moving as well.

25 Q BY MR. TOPOLSKI: So maintenance is moving from what

1 number to what number?

2 A Thirteen to 11.

3 Q Anybody else?

4 A The people that are in 17 will be moving to area 16.

5 Q So who's in 17 now?

6 A The receiving department.

7 Q And they are going down --

8 A And --

9 Q -- to 16?

10 A To 16, yes.

11 Q All right.

12 MR. TOPOLSKI: I have no further questions.

13 HEARING OFFICER MEZA: When are these moves scheduled to
14 take place, if you know?

15 THE WITNESS: The furniture for 16 has been ordered. So
16 that -- for the receiving department to move to where the 16
17 number is. So that's, I would say -- I don't know how --
18 Staples is probably going to take six weeks or so, so --

19 HEARING OFFICER MEZA: Okay. Okay. I have one other
20 question. Performance reviews, do you conduct performance
21 reviews for the packaging employees?

22 THE WITNESS: Yes, I do.

23 HEARING OFFICER MEZA: Do you conduct the performance
24 reviews for the receiving employees?

25 THE WITNESS: Yes, I do.

1 HEARING OFFICER MEZA: Do you conduct the performance
2 reviews for the terminal and shipping employees?

3 THE WITNESS: Terminal I do when I'm their supervisor, yes,
4 and for shipping, yes.

5 HEARING OFFICER MEZA: Okay. So you -- you have done them?

6 THE WITNESS: I have done -- I haven't completed all of my
7 reviews for this year, but I --

8 HEARING OFFICER MEZA: You've done some this year for
9 terminal and for shipping employees --

10 THE WITNESS: For --

11 HEARING OFFICER MEZA: -- some performance reviews?

12 THE WITNESS: For shipping. Terminal, the supervisor was
13 still around to do them.

14 HEARING OFFICER MEZA: Okay.

15 THE WITNESS: So he did his own prior to being discharged.

16 HEARING OFFICER MEZA: Okay. And the maintenance
17 employees --

18 THE WITNESS: Their --

19 HEARING OFFICER MEZA: -- do you know who does their
20 performance reviews?

21 THE WITNESS: Their supervisor, Dan Sparks, does theirs.

22 HEARING OFFICER MEZA: Okay. And the quality control?

23 THE WITNESS: It was Anna at the time, but right now the
24 position is open.

25 HEARING OFFICER MEZA: Okay. I have no further questions.

1 Are there any further questions?

2 MR. CANTORE: Yes.

3 **FURTHER RECROSS-EXAMINATION**

4 Q BY MR. CANTORE: If an employee is going to be absent,
5 isn't there a hotline that they call and leave a recording or
6 something?

7 A Yes. That --

8 Q Okay.

9 A -- goes --

10 Q They don't have to speak to HR, right?

11 A I'm sorry?

12 Q Why would an employee have to go to HR?

13 A There's numerous reasons.

14 Q Name a few.

15 A They want to change their benefits, they need a W2 form,
16 they have questions on their benefits, questions on --

17 Q Things that happen rarely, correct?

18 A I couldn't speak to --

19 Q Well, if I'm sick --

20 A -- how often people are --

21 Q -- with cancer, I may have a lot of questions about my
22 benefits. I appreciate that. But for the average employee on
23 the average day, the average week, the average month, how often
24 do they go over to HR?

25 A Probably -- I would assume not that often, but --

1 MR. CANTORE: That's all.

2 HEARING OFFICER MEZA: Any further questions?

3 MR. TOPOLSKI: Mercifully, I have no further questions.

4 THE WITNESS: Thank you.

5 MR. CANTORE: Let's do lunch.

6 HEARING OFFICER MEZA: Okay. All right. So --

7 MR. CANTORE: We can agree on something.

8 HEARING OFFICER MEZA: No objection.

9 Okay. Ms. Puig, you're excused. Thank you for your time.

10 THE WITNESS: Thank you very much.

11 HEARING OFFICER MEZA: Okay. So --

12 MR. CANTORE: Where's your appearance sheet, by the way?

13 HEARING OFFICER MEZA: Okay. Let's go ahead and break at
14 this time. So let's go ahead and go off the record.

15 (Off the record at 12:43 p.m.)

16 HEARING OFFICER MEZA: Okay. On the record. Okay. So
17 now, Mr. Topolski, you stated during the break that you do not
18 have any more witnesses at this time to call. Is that correct?

19 MR. TOPOLSKI: Correct.

20 HEARING OFFICER MEZA: Okay. So now at this time, Mr.
21 Cantore is presenting his first witness. And what is your
22 name, sir?

23 MR. ALBAN: My name is Carlos Alban.

24 HEARING OFFICER MEZA: Okay.

25 MR. ALBAN: Spelled A-L-B-A-N.

1 HEARING OFFICER MEZA: Okay. Can you please raise your
2 right hand?

3 Whereupon,

4 CARLOS ALBAN

5 having been duly sworn, was called as a witness herein and was
6 examined and testified as follows:

7 HEARING OFFICER MEZA: Okay. And now can you please state
8 and spell your name for the record again?

9 THE WITNESS: First name Carlos. C-A-R-L-O-S. Last name
10 Alban. A-L-B-A-N.

11 HEARING OFFICER MEZA: Okay. And Mr. Cantore, you can
12 proceed. You can put your hand down. Thank you.

13 DIRECT EXAMINATION

14 Q BY MR. CANTORE: Mr. Alban -- can I call you Carlos?

15 A Yes.

16 Q Are you here pursuant to a subpoena?

17 A Yes.

18 Q What is your job? Are you employed at Cargill?

19 A Yes, sir.

20 Q In the Fullerton facility?

21 A That's correct.

22 Q And what is your job there?

23 A For right now, it's a purchasing -- purchaser.

24 Q And how long have you been there?

25 A Total of two years. One year as a temp, one year through

1 Cargill.

2 Q Okay. Let's talk about your temp. Where were you
3 employed before Cargill?

4 A It was New Century Snacks. I was a warehouse supervisor
5 in City of Commerce, California.

6 Q Okay. And what job were you applying for at Cargill when
7 you took the temp position?

8 A It was a lead position.

9 Q Okay.

10 A Lead man.

11 Q And while as a temp, did you ever function as a lead?

12 A Yes.

13 Q What shift?

14 A Originally it was first. And then I went to second shift.

15 Q Okay. Were you the only lead on the second shift, when
16 you were on the second shift?

17 A Yes, I was.

18 Q Were you leading not only the temps but the regular
19 employee?

20 A Yes.

21 Q Okay. And have you ever disciplined employees as a lead?

22 A During my short period, yes. I had an incident.

23 Q What happened?

24 A Two of the temp employees kind of like went on -- started
25 a fight with one of the cargo forklift driver. So I had to

1 pretty much discipline and like fired him on the spot.

2 Q Okay. And did anybody tell you you could fire people? ---

3 A In that time, yeah, it was my super -- my direct

4 supervisor Gil Alvarado.

5 Q And what was his position?

6 A Supervisor.

7 Q By the way, what are the full titles of leads? Do you

8 know?

9 A Can you repeat the question?

10 Q Well, is the term sup -- level one supervisor ever used?

11 A It was -- no, it was just like a lead man. I wasn't aware

12 of that, until I heard last -- two weeks ago a comment from

13 Mike Mattingly.

14 Q Who's Mike?

15 A He's Jesus' boss, Jesus Valadez' boss. And he kind of

16 like clarified that.

17 Q And what is -- what was his comment?

18 A Defining lead man as a supervisor number one. And

19 supervisor's a level two.

20 Q And how did that come up?

21 MR. TOPOLSKI: Objection. It's clearly hearsay.

22 MR. CANTORE: It is hearsay, but it is common -- is

23 statements against the corporation's own interests. So --

24 MR. TOPOLSKI: No, it isn't.

25 MR. CANTORE: -- if the head of the company, the plant

1 superintendent's boss admits to him that the leads are
2 supervisors level one, then I think we should be able to get it
3 in, even if it is hearsay.

4 HEARING OFFICER MEZA: Okay. So overruled. And the
5 reader of the record will just afford it, you know, the proper
6 weight. Go ahead.

7 Q BY MR. CANTORE: What was the nature of your conversation
8 with Mike?

9 A Well, he was talking about that the Union is not good for
10 us, to make -- you know, really think about it, you know,
11 before we make any decisions. And we don't really need to.

12 Q Okay. And how did this conversation about leads come in,
13 or supervisors or what?

14 A Because we tried to find old -- explanation on job
15 description. You know. Because we told him that many of us
16 has multiple tasks and getting paid as one. So that's why.

17 Q And what did Mike say about leads and using the word
18 supervisor?

19 A They're considered level one.

20 Q Level one supervisors.

21 A Yeah. Yes.

22 Q Okay. And -- now, you work in receiving. You don't have
23 a lead, correct?

24 A I don't.

25 Q Who do you report to?

1 A Officially, well Stephanie. But I was just aware of right
2 now Mark Foster is my supervisor, which I rarely talk to him.
3 You know, it's weird when, you know, I talk to him.

4 Q You didn't even know he was your supervisor?

5 A I wasn't sure. Because normally I report to her, to
6 Stephanie.

7 Q Okay.

8 HEARING OFFICER MEZA: And by Stephanie, you mean
9 Stephanie Puig?

10 THE WITNESS: Yes.

11 HEARING OFFICER MEZA: Okay.

12 THE WITNESS: She's my supervisor.

13 HEARING OFFICER MEZA: Okay. What is your job now? It is
14 the rece -- purchasing, right?

15 THE WITNESS: Yeah. I bring raw materials, which is like
16 corrugated boxes, bags for the packaging warehouse. So
17 basically what I do, I create purchasing requisitions for --
18 depending on the demands for the production. And then I also
19 participate as an inventory controller. You know, I do my
20 walk-throughs, check around the packaging warehouse areas. So
21 I'm pretty much around.

22 Q BY MR. CANTORE: So you pretty much walk around the whole
23 packaging plant?

24 A Yes.

25 Q Okay.

- 1 A From shipping to receiving to the packaging area.
- 2 Q How often do you get into bulk?
- 3 A Only -- I would say when we have those trains or when big
- 4 bosses are in the house and they decide to have the conference
- 5 room at the terminal.
- 6 Q Other than these rare occasions on a regular basis, you
- 7 have no interaction with the employees on the other side of the
- 8 tracks?
- 9 A No.
- 10 Q Okay. How often do you see the employees from the other
- 11 side of the tracks, including Mr. Lim, anybody else over there
- 12 coming onto your side of the tracks?
- 13 A If I have to give a number from seven -- I mean, five days
- 14 a week, I would say maybe once every week.
- 15 Q Once a week. Are they always the same employees you see
- 16 or different employees you see?
- 17 A Most likely I see one only.
- 18 Q Which one is that?
- 19 A Steve Lim.
- 20 Q Steve Lim. Okay. Do you know any of the terminal
- 21 employees?
- 22 A I don't really get to know anybody in that area. I mean --
- 23 Q Do you know any of the packing employees?
- 24 A Oh yeah. I know everyone.
- 25 Q Any of the shippers?

1 A Yes.

2 Q But at the terminal, you don't know any.

3 A No.

4 Q Okay. How did you get the job as a purchaser? Did
5 anybody recommend you for that job?

6 A Yes. It was Jaime Sedano.

7 Q And when he recommended you for the job, what was his
8 position?

9 A He was purchaser.

10 Q At the time he recommended you, though, what was his
11 position?

12 A He was lead.

13 HEARING OFFICER MEZA: What kind of lead?

14 THE WITNESS: Packaging lead.

15 HEARING OFFICER MEZA: Okay.

16 THE WITNESS: Yes.

17 Q BY MR. CANTORE: He was the purchaser before you?

18 A Yes.

19 Q And he got the promotion to lead?

20 A Yes.

21 Q And when he got the promotion, he recommended you to take
22 his job?

23 MR. TOPOLSKI: Objection, leading.

24 THE WITNESS: Yeah, so tec --

25 HEARING OFFICER MEZA: Okay. Can you rephrase the

1 question?

2 Q BY MR. CANTORE: Tell us what happened?

3 A So technically, he trained me two weeks before they made
4 the official announcement that he was going to be the packaging
5 lead to kind of like get to a feeling about the system, about
6 the role as a purchaser. And he told me, "You know what, I
7 will put my word, you know, for you to be the purchasing." And
8 that's how I got the --

9 HEARING OFFICER MEZA: He told you he would put his word?

10 THE WITNESS: Yes.

11 HEARING OFFICER MEZA: Oh, okay. And you said you worked
12 in -- you work in receiving, right?

13 THE WITNESS: In that area, yes. I have my --

14 HEARING OFFICER MEZA: Okay. Where is the receiving on
15 the Employer's Exhibit 1?

16 MR. CANTORE: Seventeen.

17 HEARING OFFICER MEZA: Number 17?

18 MR. CANTORE: Here, let's -- can we give him a copy of
19 the --

20 HEARING OFFICER MEZA: Yeah, I think that would be a good
21 idea.

22 Q BY MR. CANTORE: Are you at 12? I forgot. I'm sorry.
23 Where's your -- do you have an office?

24 A Yes. More -- most likely, it's going to be on the 17.

25 HEARING OFFICER MEZA: Number 17 of Employer's Exhibit --

1 THE WITNESS: Yes.

2 HEARING OFFICER MEZA: -- 1?

3 THE WITNESS: Yes.

4 HEARING OFFICER MEZA: Okay.

5 THE WITNESS: Yes.

6 Q BY MR. CANTORE: And you said you walk around the plant
7 for inventory purposes, see what packing materials you need,
8 things like that. And you walk from 17 to 11 and from 18 to
9 16. That whole area, right?

10 A That's correct.

11 Q Okay. And I believe your testimony was you never crossed
12 the tracks to five, 14, 13 any of that?

13 A No. No. Not for -- to accomplish my job duties.

14 Q Okay. Now, how does a company -- I'm a truck driver.
15 I've got a whole order in my back. Where do I go? How do I
16 know where to drop it off? I'm delivering a whole order of
17 materials. How do I know where to go?

18 A Most of the vendors that we have, they're the same
19 drivers, except for the UPS or FedEx. With those carriers, we
20 have problems, you know, mixing products for packaging,
21 products for terminal.

22 Q Which ones do you have trouble with?

23 A FedEx and UPS.

24 Q Okay. But the regular drivers delivering from a
25 corrugated cardboard company or something like that, they know

1 to deliver to you.

2 A Yes.

3 Q Is anything destined, planned to be delivered to what is
4 13 on that diagram, the mechanics area?

5 A As far as I know, it's only parts that the guy who used to
6 do my -- kind of like the same role that I have for the
7 mechanics, parts would deliver there.

8 Q And by parts, you mean valves or --

9 A Yes.

10 Q -- nuts and bolts. Things that a --

11 A Hoses, tools, parts. Any stuff that they might need.

12 Q Anything that a maintenance crew would need.

13 A Exactly.

14 Q Okay. You didn't handle those orderings, correct?

15 A No, I don't.

16 Q That was done over on 13.

17 A Yes.

18 Q Anything you dealt with, labels, cardboard, bottles, empty
19 bottles, whatever you ordered, they get delivered over by 12,
20 correct?

21 A Yes exactly.

22 Q Okay. Now, we heard about this bin over in 13. How does
23 that work?

24 A There's a packaging designated area, a cage, that one of
25 the temps, Lorraine Camacho has the key for it. And that's

1 mainly for boxes that might get delivered by mistake. Like
2 labels, especially, labels that are for the production. So
3 sometimes the FedEx guy rings the bell and no one answers.
4 Maybe during breaks. And they get delivered to the next
5 receiving area.

6 Q So rather than hang around ringing the bell, they run over
7 to the --

8 A Yes.

9 Q -- mechanic shop, where they know somebody's always there.

10 A Yeah. So they have a receiver. Now they have this guy
11 named David Gonzalez who does -- pretty much checks, you know,
12 packing sleeves versus physical items. And then he put that
13 box in that cage and either email or call or Lorraine and you
14 have the box come and pick it up.

15 Q Call who?

16 A Lorraine Camacho.

17 Q And who is Lorraine Camacho?

18 A She's a receiving clerk.

19 Q Is she a full time employee or a temp?

20 A She's a temp.

21 Q Okay. A full time temp, but --

22 A Full time temp, yes.

23 Q -- not an employee of the company.

24 A Yeah. Not a Cargill employee.

25 Q Okay. And she's a clerk in the receiving on the packaging

1 side?

2 A Yes. Number 17. That's where she works.

3 Q Okay. And someone will then go over to 13 and pick up
4 whatever was delivered there.

5 A Yes.

6 Q Who is that usually?

7 A That would be her.

8 Q And how often does that happen?

9 A It could be -- depending on my orders, it could be once a
10 week, twice a week. The most, twice a week.

11 Q Okay.

12 A My orders are big, so it's -- when it's -- normally a case
13 that's delivered to that, it's because of backorder.

14 Q How often do you, other than for the meeting -- oh, I
15 think I already asked that. I have nothing else.

16 MR. TOPOLSKI: Give me two minutes, please.

17 HEARING OFFICER MEZA: Okay. Go ahead. So off the
18 record.

19 (Off the record at 1:47 p.m.)

20 HEARING OFFICER MEZA: Okay. On the record.

21 **CROSS-EXAMINATION**

22 Q BY MR. TOPOLSKI: Okay, Mr. Alban, my name is Doug
23 Topolski and I'm counsel for Cargill and I've got some
24 questions for you about your testimony.

25 A Okay.

1 Q I'm not sure I understood. You've been in the purchasing
2 position you're in now for two years. Is that right?

3 A No, that's not right. I was -- about six, seven months as
4 a purchaser.

5 Q Okay. And you first started at the Fullerton facility as
6 a temp, correct?

7 A Correct.

8 Q And is it your testimony that you were a lead as a temp?

9 A I was a lead. I was brought in as a lead.

10 Q Okay. And is it your testimony that even though you
11 didn't work for Cargill, you fired Cargill employees?

12 A No Cargill employee. It was a temp.

13 Q So you fired a temp employee --

14 A Of both --

15 Q -- not a Cargill employee.

16 A -- both employers, yes.

17 Q So you were a temp for the temp agency and you fired an
18 agency employee, correct?

19 A That is correct.

20 Q Okay. All right. So sitting here today, you don't really
21 know for a fact whether any of the temps are classified as
22 supervisor one or not, do you?

23 A No.

24 Q Haven't seen any paperwork to that effect or any
25 classifications or any job postings or anything like that,

1 right?

2 A No.

3 Q When you got your job as a purchaser, all right, did you
4 have to fill out an application?

5 A Yeah, I was told that I had to do one.

6 Q Well, did you?

7 A Yeah.

8 Q Do you know who considered the application?

9 A Not really.

10 Q So -- okay. And so don't know who your chain of command
11 is? Was that your testimony earlier?

12 A Well, I was interviewed by an engineer, by the
13 superintendent and by Jaime Sedano.

14 Q Okay. But you did not -- you do not report to Stephanie,
15 do you?

16 A No, she was on the training program.

17 Q Okay. And today, your boss is in Minneapolis, right?

18 A I'm not sure.

19 Q So you -- so if there was testimony by Ms. Puig that your
20 boss is in Minneapolis and you're sitting here thi -- you have
21 no way to refute that. Is that why I'm -- is that what you're
22 telling me?

23 A Well normally, I have to report to her. For any decision
24 that I have to make within Fullerton plant, I have to run it by
25 her.

1 Q But you don't know where your cost center is to where
2 you're assigned, do you?

3 A The cost centers are -- in -- Jesus Valadez. Which are --

4 Q Okay. And how do you know that. Tell me --

5 A Because --

6 Q -- how you know that.

7 A -- everyone has a code. All supervisor has a code, a cost
8 center, like you said. So if I have to -- for example, I have
9 to purchase anything for packaging, I have to run it by her,
10 because she will have to approve my PO.

11 Q You're not following my question. I'm sorry. It's --

12 A Uh-huh.

13 Q -- not -- I'm not being clear enough. Your area of
14 responsibility --

15 A Uh-huh.

16 Q -- all right -- from where your salary comes and to where
17 you report, you port -- you report to purchasing, correct?

18 A Yes.

19 Q You don't report to receiving, do you?

20 A No, I don't.

21 Q Okay. So you have a different boss than Stephanie and
22 he's in Minneapolis, isn't he?

23 A Now I know, yes.

24 Q Okay. Now, how much of your time do you spend in your
25 office?

1 A I would say 40 percent of my time.

2 Q Okay. So during that 40 percent of the time, you have no
3 idea who's walking around areas 17, 12, eight, nine, ten, 11
4 and 18, do you?

5 MR. CANTORE: We will stipulate to that.

6 HEARING OFFICER MEZA: Okay. Let's just let him answer.

7 THE WITNESS: Can you clarify that --

8 Q BY MR. TOPOLSKI: Yes.

9 A -- comment?

10 Q When you are sitting in your office --

11 A Uh-huh.

12 Q -- in area 17 on Employer's Exhibit 1 --

13 A Uh-huh.

14 Q -- you have no idea who else is anywhere else in that
15 building, do you?

16 A I most likely have a good idea, because everyone is
17 stationed at the lines.

18 Q So you can tell me that when you're sitting in your desk
19 at 17 --

20 A Uh-huh.

21 Q -- you know every person who's everywhere else in that big
22 building?

23 A Normally, yes.

24 Q And how is that possible?

25 A Because everyone has -- I mean, everyone has like a sing

1 -- starting -- like for myself, I normally start as the
2 production demands. So I know for the first two hours, for
3 example, the 35 pound line, I know who's going to be doing the
4 depalletizer, who's going to be the filler and who's going to
5 be do -- putting away.

6 Q But for example, you don't know when Ms. Stiver's going to
7 leave her office, do you?

8 A She comes in at -- later.

9 Q To answer my question, you don't know when she's going to
10 get up and leave her office and go anywhere else in the
11 building, do you?

12 A No.

13 Q And you don't know when any of the mechanics are going to
14 come over and work on a piece of equipment on the lines in area
15 nine, do you?

16 A No.

17 Q And you don't know when somebody from the lab may come
18 over to pick up paperwork or get a sample, because you can't
19 see them over there. Isn't that true?

20 A That's true.

21 Q So the bottom-line is, you don't know who's in the
22 building when you're sitting in your desk, true?

23 A For that 40 percent of my time, no.

24 Q Thank you. What do you need to go to HR for?

25 A I don't really go to HR. I do my self-service, when I

1 have to change my W-2 form. There's a website called HR
2 Director. You can do all those changes. Check your pay rate,
3 print your pay stub.

4 Q Is it your testimony you've never been to the HR --

5 A I have been --

6 Q -- that's in building 14?

7 A -- yes.

8 Q And other employees go there, too, don't they?

9 A I'm not aware of anyone else.

10 Q So is it your testimony -- you're going to sit here today
11 and tell me you know nobody else but you has gone to building
12 14. Is that what you're going to say?

13 A Yes.

14 Q Okay. That's what you want to say, that's fine with me.

15 HEARING OFFICER MEZA: When was the last time you went to
16 HR?

17 THE WITNESS: I would say --

18 HEARING OFFICER MEZA: Approximately.

19 THE WITNESS: -- two months ago.

20 HEARING OFFICER MEZA: Two months ago. Okay.

21 MR. TOPOLSKI: Okay.

22 THE WITNESS: Can I clar -- it was a month ago. One month
23 ago.

24 HEARING OFFICER MEZA: Okay.

25 THE WITNESS: I'm --

1 HEARING OFFICER MEZA: So your testimony is that one month
2 ago --

3 THE WITNESS: One --

4 HEARING OFFICER MEZA: -- you were at --

5 THE WITNESS: -- month ago, yes.

6 HEARING OFFICER MEZA: -- HR.

7 THE WITNESS: Yes.

8 HEARING OFFICER MEZA: Okay.

9 Q BY MR. TOPOLSKI: Now, are there times -- you testified
10 that a temp would go over to building 13 to the packaging cage,
11 correct?

12 A Yes.

13 Q I'm sorry, building 14.

14 A Fourteen, yes.

15 Q I'm sorry. Now, aren't there times when the things that
16 need to be delivered from building 14 over to the other
17 building are so big that she has to get a forklift operator to
18 help her?

19 A It all depends.

20 Q Right. But the answer is -- my question is yes, isn't it?

21 A Yes. Yes.

22 Q So sometimes she'll take somebody, one of the forklift
23 operators from receiving over to help her get stuff, correct?

24 A Yes.

25 Q Okay.

1 MR. TOPOLSKI: That's all I have.

2 HEARING OFFICER MEZA: Okay. And just to clarify, the

3 cage is in --

4 THE WITNESS: Fourteen.

5 HEARING OFFICER MEZA: -- in the terminal building?

6 THE WITNESS: Yes.

7 HEARING OFFICER MEZA: Okay.

8 MR. CANTORE: No. No. No.

9 HEARING OFFICER MEZA: Oh.

10 MR. CANTORE: Mechanic's building.

11 HEARING OFFICER MEZA: Okay.

12 MR. TOPOLSKI: No. No. The cage is in the terminal

13 building, number 14.

14 HEARING OFFICER MEZA: Yeah, number 14. Yeah.

15 MR. CANTORE: No, the cage is in 13.

16 THE WITNESS: No -- yeah, we have --

17 HEARING OFFICER MEZA: Okay.

18 THE WITNESS: -- actually -- let me clarify that. The

19 cage is in 14, but we also have stuff to be picked up in the

20 13.

21 HEARING OFFICER MEZA: Okay.

22 THE WITNESS: So there's two areas, yeah.

23 HEARING OFFICER MEZA: There's two cages?

24 THE WITNESS: No. No. One is the cage.

25 HEARING OFFICER MEZA: Okay. Where is the cage?

1 THE WITNESS: Fourteen.

2 HEARING OFFICER MEZA: Okay.

3 MR. TOPOLSKI: Yes.

4 HEARING OFFICER MEZA: Okay. So the cage --

5 MR. CANTORE: Sorry, I thought --

6 HEARING OFFICER MEZA: -- is in 14.

7 MR. CANTORE: -- it was 13.

8 HEARING OFFICER MEZA: That's his testimony.

9 THE WITNESS: Uh-huh.

10 MR. CANTORE: Okay.

11 HEARING OFFICER MEZA: Okay. All right.

12 MR. TOPOLSKI: No further questions.

13 MR. CANTORE: I'm sorry, when --

14 HEARING OFFICER MEZA: Okay, do you have further
15 questions?

16 MR. CANTORE: Yes.

17 **REDIRECT EXAMINATION**

18 Q BY MR. CANTORE: When you were hired --

19 HEARING OFFICER MEZA: Mr. Cantore.

20 Q BY MR. CANTORE: -- you gave, I think, three names of the
21 people who interviewed you --

22 A Yes.

23 Q -- for the job.

24 A That's correct.

25 Q And what were those names again?

- 1 A Jesus Valadez.
- 2 Q And his position is the plant superintendent, correct?
- 3 A Yes.
- 4 Q Who else?
- 5 A Linsay Farrell.
- 6 Q And what's Linsay's position?
- 7 A She's like a project engineer.
- 8 Q Okay. And who else?
- 9 A And Jamie Sedano.
- 10 Q And his position is?
- 11 A Now it's a lead man.
- 12 Q And what was his position then?
- 13 A He -- technically, well, he was a lead man.
- 14 Q Okay. And how often does the temp in receiving, the
- 15 female temp in receiving, what's her name, Lorraine?
- 16 A Lorraine.
- 17 Q How often does Lorraine go over with the forklift operator
- 18 pick up stuff in the cage in 14?
- 19 A That's really rare, you know, because --
- 20 Q More than once a month?
- 21 A No. I would say once a month maybe.
- 22 Q Okay.
- 23 MR. CANTORE: I have nothing further.
- 24
- 25 Q BY MR. TOPOLSKI: What do you mean when you say Jaime

RECROSS-EXAMINATION

1 Sedano was technically a lead man?

2 A Because it was officially announced before I got my
3 interview with them.

4 Q So when you interviewed with him, he was not a lead man?

5 A He was a lead. He was officially --

6 Q Well, he either was technically a lead and (sic) and was a
7 lead.

8 A He was a lead.

9 Q Okay. You don't have -- you have no idea sitting here
10 today, what weight, if any, his purported recommendation of you
11 had at getting the job, do you?

12 A Well, it was from his mouth who came and told me --

13 Q He said he --

14 A -- "You'll get --

15 Q -- recommended you, right?

16 A He told me that, "You will get the job."

17 Q He said he recommended you, right?

18 A Yes.

19 Q But you don't know what weight that recommendation was
20 given by either Ms. Ferrar (sic) or the plant manager, do you?

21 A No.

22 MR. TOPOLSKI: No further questions.

23 HEARING OFFICER MEZA: Okay.

24 **FURTHER REDIRECT EXAMINATION**

25 Q BY MR. CANTORE: But he did recommend you, right?

1 A Correct.

2 Q And he promised you the job, right?

3 A Correct.

4 Q And he was able to keep to keep his promise, wasn't he?

5 MR. TOPOLSKI: Objection.

6 THE WITNESS: Correct.

7 HEARING OFFICER MEZA: Okay.

8 **FURTHER RECROSS-EXAMINATION**

9 Q BY MR. TOPOLSKI: How do you -- let's -- how do you know?
10 What specific facts do you have, all right, that tell you that
11 you knew he could keep that alleged promise?

12 MR. CANTORE: I didn't an -- he didn't answer that
13 question that way.

14 MR. TOPOLSKI: That's exactly what he answered. You can
15 read it back.

16 MR. CANTORE: No. I --

17 HEARING OFFICER MEZA: Okay.

18 MR. CANTORE: -- he said he kept the promise. He didn't
19 say he knew how he kept the promise. He just said he kept the
20 promise.

21 Q BY MR. TOPOLSKI: Okay. So you don't know how. Is that
22 your testimony?

23 A Well, he pre -- he trained me two weeks before, you know.

24 Q You're not answering my question. You don't know whether
25 -- you don't know what weight he was given and you don't know

1 he kept the, "promise," do you?

2 A No.

3 MR. TOPOLSKI: No further questions.

4 HEARING OFFICER MEZA: Okay. So do you have any further
5 questions?

6 MR. CANTORE: No.

7 HEARING OFFICER MEZA: Okay. I have a couple of
8 questions. So I just want to know just for the record, so it's
9 clear. I want you to walk us through a regular day for you,
10 okay? Was yesterday a regular day for you?

11 THE WITNESS: Yes.

12 HEARING OFFICER MEZA: Okay. So tell us about yesterday.
13 What time did you come into work? What time did you leave?
14 What did you do? Break it down hour by hour. What did you do,
15 where did you spend your time? Focus on the map. And --

16 THE WITNESS: Can I just pick yesterday as an example,
17 because my schedule varies?

18 HEARING OFFICER MEZA: Yeah, yesterday. Yesterday as an
19 example.

20 THE WITNESS: Okay. So --

21 HEARING OFFICER MEZA: Yeah. Because you said yesterday
22 was a regular day --

23 THE WITNESS: Yes.

24 HEARING OFFICER MEZA: -- right? Yeah.

25 THE WITNESS: Okay, so --

1 HEARING OFFICER MEZA: Okay.

2 THE WITNESS: -- 5:00, that was my start day.

3 HEARING OFFICER MEZA: Okay. Yeah. And talk into the
4 mic.

5 THE WITNESS: So I start at 5:00 in the morning.

6 HEARING OFFICER MEZA: Okay.

7 THE WITNESS: Normally turn on my computer, check
8 especially any emails from lead mans, in case if, you know, we
9 run out of labels or we run out of boxes. If everything was --
10 it was fine from priors (sic) run?

11 HEARING OFFICER MEZA: Uh-huh.

12 THE WITNESS: So then what I do, I run an MRP report of my
13 demands to bring stuff in the warehouse.

14 HEARING OFFICER MEZA: What's an MRP report?

15 THE WITNESS: It's a demand for production for raw
16 materials that I need to -- it's a report I have to run.

17 HEARING OFFICER MEZA: Okay.

18 THE WITNESS: And it will tell me how many of what I item
19 I need to bring.

20 HEARING OFFICER MEZA: Oh, to purchase.

21 THE WITNESS: To purchase, yes.

22 HEARING OFFICER MEZA: Okay. So you purchase raw material
23 for the --

24 THE WITNESS: For the packaging department.

25 HEARING OFFICER MEZA: -- for the packaging department.

1 THE WITNESS: Yes.

2 HEARING OFFICER MEZA: Okay.

3 THE WITNESS: I also do partially stuff for shipping, like
4 airbags, seals for the trucks.

5 HEARING OFFICER MEZA: Seals for the trucks that who
6 operates?

7 THE WITNESS: What's it called, shipping department.

8 HEARING OFFICER MEZA: Okay.

9 THE WITNESS: So yeah, that's pretty much it.

10 HEARING OFFICER MEZA: Okay. Go ahead.

11 THE WITNESS: So once I'm done with my report, what I do
12 is I can't expend a lot of time like walking, just focusing on
13 one item. I have to, you know, go out different lines and do a
14 physical count on --

15 HEARING OFFICER MEZA: So you walk out to one of the
16 lines --

17 THE WITNESS: To --

18 HEARING OFFICER MEZA: -- where?

19 THE WITNESS: -- yeah, so --

20 HEARING OFFICER MEZA: Look at Employer's Exhibit 1.

21 THE WITNESS: -- I start number 12 to 10, which is most
22 likely where we keep the 50 pound, 35 pound.

23 HEARING OFFICER MEZA: Okay.

24 THE WITNESS: And -- yeah, raw materials for that lines,
25 for those two lines, the 50 pound and the 35 jib line.

1 HEARING OFFICER MEZA: Okay.

2 THE WITNESS: So then I go back to my desk and recreate a
3 work orders (sic).

4 HEARING OFFICER MEZA: Okay.

5 THE WITNESS: I mean, a purchase --

6 HEARING OFFICER MEZA: Purchase orders?

7 THE WITNESS: -- order. Yes.

8 HEARING OFFICER MEZA: Okay.

9 THE WITNESS: And then I do my second round. And it will
10 be dedicate from 12 to most likely eight area, where we keep
11 the five quart boxes and bottles.

12 HEARING OFFICER MEZA: Uh-huh.

13 THE WITNESS: And again, you know, I run my report and I
14 go back to my desk and check what's the -- if we have to make
15 any inventory adjustments, I just --

16 HEARING OFFICER MEZA: Uh-huh.

17 THE WITNESS: -- hand that paper to Lorraine, which is the
18 shipping clerk.

19 HEARING OFFICER MEZA: Okay.

20 THE WITNESS: And she also works with me, you know, making
21 inventory adjustments.

22 HEARING OFFICER MEZA: Okay.

23 THE WITNESS: And then I go to the new line, because
24 that's a har -- kind of like hard project for me, because I
25 don't know what's the demand for it.

1 HEARING OFFICER MEZA: Okay.

2 THE WITNESS: So I have to keep on that. They run a lot
3 of testing, so I need to have enough inventory for that.

4 HEARING OFFICER MEZA: Okay. And --

5 THE WITNESS: Which is --

6 HEARING OFFICER MEZA: -- this new line is by where?

7 THE WITNESS: -- it's -- I would say somewhere around the
8 10s?

9 HEARING OFFICER MEZA: Okay.

10 THE WITNESS: It goes like this.

11 HEARING OFFICER MEZA: So one of the 10s.

12 THE WITNESS: Yeah.

13 HEARING OFFICER MEZA: Okay. All right.

14 THE WITNESS: And I do my rounds by each station. Because
15 normally we have to keep control of damaged bottles, damaged
16 cases --

17 HEARING OFFICER MEZA: Uh-huh.

18 THE WITNESS: -- in order for us to make adjustment in the
19 inventory, so we don't count -- I mean, we don't count on
20 damaged material.

21 HEARING OFFICER MEZA: Okay.

22 THE WITNESS: And I do my rounds for the shipping area,
23 because again, airbags, seals, any issues with the stretch
24 wrap. You know, I like to talk to the shipping guys.

25 HEARING OFFICER MEZA: Okay.

1 THE WITNESS: And that's pretty much every day. You know,
2 I walk around, spend certain amount of hours right there and go
3 back to my desk, do my purchasing, go back to --

4 HEARING OFFICER MEZA: Okay.

5 THE WITNESS: -- like that.

6 HEARING OFFICER MEZA: That was your entire day yesterday?

7 THE WITNESS: Yes.

8 HEARING OFFICER MEZA: Okay. When did you take your
9 break? Where did you take your break, actually?

10 THE WITNESS: So it's every -- every two hours, I have to
11 take a break. Like from 5:00 to 7:30, I take my first break
12 and I go to either -- well somewhere around 18.

13 HEARING OFFICER MEZA: Okay.

14 THE WITNESS: Or some -- well, yesterday.

15 HEARING OFFICER MEZA: Yeah. Yeah.

16 THE WITNESS: So it was 18.

17 HEARING OFFICER MEZA: Uh-huh.

18 THE WITNESS: And then I took my lunch close to the ten,
19 right here.

20 HEARING OFFICER MEZA: Okay. Okay. And did you interact?
21 Did you go to the other side at all to either area marked as
22 number one, two, seven, four, three, six, 14, 13, five, 15
23 yesterday?

24 THE WITNESS: No, I didn't.

25 HEARING OFFICER MEZA: Okay. Did you go there last week?

1 THE WITNESS: I had -- yes, did go, because there was a
2 guy who was talking about the Union. And we were talk -- we
3 were told to meet him somewhere between the tanks here in
4 area --

5 HEARING OFFICER MEZA: But did you go perform work.

6 THE WITNESS: Oh, no. No.

7 HEARING OFFICER MEZA: Okay. You didn't go to that area
8 to perform any of your --

9 THE WITNESS: No.

10 HEARING OFFICER MEZA: -- duties. Okay. All right. So
11 the -- when was the last time you went to the other area and
12 marked either number one, two, seven, four, three, six, 14, 13,
13 five, or 15 to perform any work? When was the last time you
14 went over there?

15 THE WITNESS: To perform any work?

16 HEARING OFFICER MEZA: Yeah, to perform any of your
17 duties -- you regular duties that you can recall.

18 THE WITNESS: Maybe six months ago I had to cover for
19 someone --

20 HEARING OFFICER MEZA: Uh-huh.

21 THE WITNESS: -- because that person left the company, and
22 they pretty much told me you're going to cover for a couple
23 weeks there.

24 HEARING OFFICER MEZA: Where?

25 THE WITNESS: Area 13.

1 HEARING OFFICER MEZA: Thirteen, which is the maintenance
2 shop.

3 THE WITNESS: Yeah, maintenance shop.

4 HEARING OFFICER MEZA: Okay. All right. And then
5 yesterday, did you see anyone from -- what departments did you
6 interact with yesterday from this list on -- refer to Exhibit
7 2?

8 THE WITNESS: It would be packaging --

9 HEARING OFFICER MEZA: Okay.

10 THE WITNESS: -- which is eight, nine, and 16.

11 HEARING OFFICER MEZA: Uh-huh.

12 THE WITNESS: Also with 10, which is ole line.

13 HEARING OFFICER MEZA: Okay.

14 THE WITNESS: Ten and number 12, which is the receiving.

15 HEARING OFFICER MEZA: Okay. So the receiving. What
16 about terminal?

17 THE WITNESS: No.

18 HEARING OFFICER MEZA: Okay. What about shipping?

19 THE WITNESS: I did, yes.

20 HEARING OFFICER MEZA: Yeah. What about the quality
21 control?

22 THE WITNESS: No.

23 HEARING OFFICER MEZA: Did you see any of those people?

24 THE WITNESS: No.

25 HEARING OFFICER MEZA: Okay. Maintenance. Did you see

1 any of the maintenance people yesterday or interact with them?

2 THE WITNESS: I -- no, I didn't -- I saw Felix, which is --
3 one of the mechanics --

4 HEARING OFFICER MEZA: Uh-huh.

5 THE WITNESS: -- passing by the 35-pound line.

6 HEARING OFFICER MEZA: Yesterday?

7 THE WITNESS: Yesterday, yes.

8 HEARING OFFICER MEZA: Okay.

9 THE WITNESS: But --

10 HEARING OFFICER MEZA: Did you interact with him or you
11 just saw him walk by?

12 THE WITNESS: -- no, I just saw him walk by.

13 HEARING OFFICER MEZA: Okay. When was the last time that
14 you saw anyone from terminal in your -- by receiving or
15 anywhere when you were working in the receiving area?

16 THE WITNESS: I would say about two months ago, this guy
17 Daniel Verdugo.

18 HEARING OFFICER MEZA: Uh-huh. Okay. And that was the
19 last time?

20 THE WITNESS: Yeah, that was the last time.

21 HEARING OFFICER MEZA: Okay. And what do you call this
22 whole section over her on the left side? That whole square
23 that is, like, 18, 11, ten, nine --

24 THE WITNESS: It's --

25 HEARING OFFICER MEZA: -- 16, 8, 12, 17. I think you

1 might have stated it on the record before.

2 THE WITNESS: -- packaging, yeah.

3 HEARING OFFICER MEZA: You call that whole square --

4 THE WITNESS: Yes.

5 HEARING OFFICER MEZA: -- packaging?

6 THE WITNESS: Yes.

7 HEARING OFFICER MEZA: Okay. All right. Okay. How much

8 do you make an hour?

9 THE WITNESS: Can I decline that or?

10 MR. CANTORE: No, tell her. Do you want to decline it?

11 THE WITNESS: No. Well, it's -- I got co-workers here. I

12 don't know if I'm allowed to do it.

13 UNIDENTIFIED SPEAKER: I'll close my ears.

14 MR. CANTORE: Go ahead, tell her.

15 HEARING OFFICER MEZA: You need to answer the question.

16 THE WITNESS: I need to answer the question. Around 19.

17 HEARING OFFICER MEZA: Okay. All right. Okay. And,

18 let's see. Your -- the benefits that you have --

19 THE WITNESS: Uh-huh.

20 HEARING OFFICER MEZA: -- do you know if they're the same

21 benefits as for the other employees --

22 THE WITNESS: Yeah, everyone has --

23 HEARING OFFICER MEZA: -- that are employed as --

24 THE WITNESS: -- everyone --

25 HEARING OFFICER MEZA: -- everyone has the same benefits.

1 THE WITNESS: Yeah.

2 HEARING OFFICER MEZA: Okay. Do you have any sort of
3 special education for the position that you hold?

4 THE WITNESS: No.

5 HEARING OFFICER MEZA: Okay. All right. As far as you
6 know, is there a special -- actually, you know -- no, I'm not
7 going to ask that. Okay. Your performance review. Who gave
8 you your last performance review?

9 THE WITNESS: I haven't speak (sic) to anybody in two
10 years. So the last time it was former HR Louis Quiroz --

11 HEARING OFFICER MEZA: Uh-huh.

12 THE WITNESS: -- and Lindsay Farrell.

13 HEARING OFFICER MEZA: Okay. And where do you clock in
14 for work?

15 THE WITNESS: Around area ten or 16, depending -- right
16 now there's -- 16 is under construction, so I have to do it
17 around the number ten, closest to this area right here.

18 HEARING OFFICER MEZA: Okay. If you need time off from
19 work, who do you ask for that?

20 THE WITNESS: If I have to call in sick, I call the
21 hotline. If I have to, like, request vacation --

22 HEARING OFFICER MEZA: Yeah.

23 THE WITNESS: -- that would be Stephanie Puig.

24 HEARING OFFICER MEZA: Okay. Have you ever asked her for
25 time off?

1 THE WITNESS: Yes, I did.

2 HEARING OFFICER MEZA: Did she approve it?

3 THE WITNESS: I believe she told me yes, because I
4 requested December vacations for this year, and I turned in my
5 application to her.

6 HEARING OFFICER MEZA: Okay. Do you ever work overtime?

7 THE WITNESS: Most likely, yeah, every day.

8 HEARING OFFICER MEZA: Who approves your overtime or how
9 do you know that you're going to work overtime?

10 THE WITNESS: Well, it's on -- pretty much I'm on
11 schedule. You know, it depends on my demand for work.

12 HEARING OFFICER MEZA: Uh-huh.

13 THE WITNESS: That's -- I mean sometimes I have to jump in
14 the forklift.

15 HEARING OFFICER MEZA: So you don't ask anybody on a daily
16 basis --

17 THE WITNESS: No. Pretty much, no.

18 HEARING OFFICER MEZA: -- can I work overtime.

19 THE WITNESS: No.

20 HEARING OFFICER MEZA: If you need to work it, you work
21 it.

22 THE WITNESS: Yes.

23 HEARING OFFICER MEZA: Okay. All right.

24 THE WITNESS: My job is to accomplish my entire job
25 duties, and then I could go home.

1 HEARING OFFICER MEZA: Okay. I don't have any other
2 further questions. Do you -- either of you have questions for
3 this witness?

4 MR. CANTORE: I do.

5 HEARING OFFICER MEZA: Okay.

6 MR. TOPOLSKI: I do too.

7 MR. CANTORE: My witness, I go first.

8 **FURTHER REDIRECT EXAMINATION**

9 Q BY MR. CANTORE: You said everyone has the same benefits.
10 Do you know whether the people in Vernon have the same benefits
11 as you?

12 A No, I'm talking about Fullerton only. I have no clue
13 about --

14 Q You have no clue about the rest.

15 A No.

16 Q But it could be the same benefits for every plant in
17 California, correct?

18 A It could be, yes.

19 Q Okay. And you mentioned something about a performance
20 review. Who gave you that performance interview?

21 A It was project engineer Lindsay Farrell and former HR Luis
22 Quiroz.

23 Q Any of the leads present?

24 A No.

25 Q Okay.

1 A No at the time.

2 MR. CANTORE: Nothing further.

3 **FURTHER RECROSS-EXAMINATION**

4 Q BY MR. TOPOLSKI: I just have one question. It wasn't
5 clear on one piece of your testimony, and I wasn't sure if it
6 was yesterday or another day. Did you say that you went out
7 into the tank form area to talk to somebody?

8 A It wasn't yesterday. It was about earlier this week with
9 this -- it was not a Cargill employee, it was this Union -- I
10 had -- to me -- because I didn't know what title he was, but he
11 was talking about -- bad stuff about the Union. Why we should
12 not join the Union.

13 Q And can you tell me where in Employer's Exhibit 1 you had
14 this conversation? What number?

15 A I would say somewhere between five.

16 Q All right. And why were you at number five on that -- at
17 that time?

18 A Because we were told to meet this guy in building 14,
19 which is around the HR area, but it happens to -- that this guy
20 was walking -- going back to the packaging area, so we --

21 Q Okay. So I just want to make sure, you were on your way
22 to a meeting in building 14, and you met him at area 5.

23 A Yes.

24 MR. TOPOLSKI: Okay. I have no further questions. I just
25 wanted to make sure I understand what was going on.

1 HEARING OFFICER MEZA: Okay. All right. Any further
2 questions?

3 MR. CANTORE: Nothing further.

4 HEARING OFFICER MEZA: Okay. So -- okay. So there are no
5 further questions. Thank you.

6 MR. CANTORE: Another minute.

7 HEARING OFFICER MEZA: Okay. So we're going to go off the
8 record for a minute. Thank you.

9 THE WITNESS: Thank you.

10 (Off the record at 2:11 p.m.)

11 HEARING OFFICER MEZA: On the record. Okay. Are we on
12 the record? Okay. Can you please state your first -- your
13 first and last name for the record?

14 THE WITNESS: First name is Eddie. Spell it as well?

15 HEARING OFFICER MEZA: Yes, please.

16 THE WITNESS: E-D-D-I-E. Last name is Padilla, P-A-D-I-L-
17 L-A.

18 HEARING OFFICER MEZA: Okay. And, Mr. Padilla, would you
19 raise your right hand?

20 THE WITNESS: Yes.

21 HEARING OFFICER MEZA: Okay. Your right hand is raised.
22 Whereupon,

23 **EDDIE PADILLA**

24 having been duly sworn, was called as a witness herein and was
25 examined and testified as follows:

1 HEARING OFFICER MEZA: Okay. All right. Mr. Cantore, you
2 may proceed.

3 DIRECT EXAMINATION

4 Q BY MR. CANTORE: You might if I call you Eddie?

5 A Sure.

6 Q Sure you mind or sure I can call you.

7 A I agree. Go ahead.

8 Q Are you testifying here today pursuant to a subpoena?

9 A Yes, I am.

10 Q Okay. And where do you -- do you work at Cargill?

11 A Yes, I do.

12 Q In the Fullerton facility?

13 A That is correct.

14 Q And in what area?

15 A Currently, what I do right now, I'm a super user, so I
16 don't have a designated area other than it being packaging in
17 general. There are multiple departments there, so I basically
18 service training to different people in those departments.

19 Q What two departments do you supervise train?

20 A Packaging on the lines, shipping, receiving, even training
21 leadmen, to some extent.

22 Q Okay. And just so we're clear, the super user stuff is
23 computer type of stuff.

24 A Software, yes.

25 Q Okay. How long have you been working for Cargill?

1 A As an employee, a little over a year.

2 Q And how long were you there as a temp?

3 A If you put that together, it's almost -- just under two
4 years.

5 Q Okay. And in your temp position what were you doing?

6 A As a temp, I was brought on initially to be a shipping
7 clerk. I was hired in that position. After that, I spent some
8 time in that position, I was put into a roll call production
9 controller doing and learning that position, performing that
10 position, the duties and tasks, everything. During my time in
11 that position, I was offered this temporary assignment doing --
12 becoming a super user.

13 Q Okay. Now, in becoming a super user, you heard Stephanie
14 testifying -- and I'm sorry I'm using first names instead of
15 last names, because the last names are always so hard -- did
16 you go to the same facility with Stephanie, or a different
17 facility, or do you know?

18 A During my time, I went to numerous facilities. I even
19 went to corporate. I was -- at one point in time, I was at the
20 same plant in Ohio, and we spent some time together there.

21 Q Okay. And basically learning computer software.

22 A Yes, process knowledge related to the business, intense
23 scenarios, and the software.

24 Q Okay. And then you came back, and did you continue your
25 training at the plant or whatever?

1 A When I got back, I would receive additional information
2 for training that would change. I provided training, formal,
3 on-the-job, hands-on, and even up to and including now, I'm
4 still performing training.

5 Q Okay. Where are you performing training?

6 A Within multiple departments within packaging, that being
7 the packaging office, the packaging lines, receiving, or
8 shipping.

9 Q What in the packaging line has software?

10 A They have a software system called MI, and it's specific
11 to what the line operators use.

12 Q Okay. Now, you've been training during this whole
13 process, correct?

14 A Uh-huh.

15 Q How many times do you go over to training anybody on the
16 other side of the tracks, in bulk, or, terminal, or any -- the
17 labor, or any of the places over there?

18 A I don't. I don't

19 Q Do they have the same kind of computer software?

20 A They do, but they use it in a slightly different regard.

21 Q Okay. Who does their training over there?

22 A Depending on the department, in terms of bulk, like the
23 load out and the tanks, that would be Stephanie. In terms of
24 maintenance, there's another gentleman. And in terms of
25 quality, there's another girl that does that.

1 Q And they all had the same type of course you had?

2 A Relevant to their -- what they're training, yeah.

3 Q Okay. Now, in your training over the last several
4 months -- you've been doing that for the last several months.

5 A Yes.

6 Q You're working the whole packaging area?

7 A Yes.

8 Q Do you hang out in an office 40 percent of your time like
9 Carlos does?

10 A It varies by demand. It could be more on my feet, in
11 different areas, it could be in multiple officers. It just
12 depends on the demand. So I'm pretty much everywhere on a
13 daily basis.

14 Q In the last several months, how often have you run into
15 someone from the other side of the tracks in the packaging
16 building?

17 A It's rare. Like what was mentioned earlier, I see Steve
18 Lim from time to time, but it's extremely rare.

19 Q Anyone other than Steve Lim?

20 A No.

21 Q Have you ever seen any quality control person, other than
22 Steve Lim, in the packaging area?

23 A If I have, I've seen their super user, but that was at the
24 start of implementing the software, then she went into the lab
25 to conduct her responsibilities there.

1 Q Anyone from -- I'm calling it terminal -- is that what
2 we're calling it or both. What the hell are we calling it?
3 HEARING OFFICER MEZA: Terminal.
4 THE WITNESS: Terminal.
5 MR. CANTORE: Terminal.
6 Q BY MR. CANTORE: Have you seen any terminal employees in
7 there?
8 A No, that's extremely rare. Extremely.
9 HEARING OFFICER MEZA: Well, when was the last time you
10 did see someone?
11 THE WITNESS: I can't really give you exact point on.
12 HEARING OFFICER MEZA: You don't remember. Was it more
13 than a year ago?
14 THE WITNESS: Oh, no. No. I would say probably around go
15 live. Around June, when we went live on our systems.
16 HEARING OFFICER MEZA: June of what year?
17 THE WITNESS: This year, 2014.
18 HEARING OFFICER MEZA: So that was the last time, in June.
19 THE WITNESS: Yes.
20 HEARING OFFICER MEZA: Okay.
21 THE WITNESS: Yes.
22 Q BY MR. CANTORE: When you went live on the system.
23 Somebody from bulk was there when you went live --
24 A Yes --
25 Q -- on the system?

1 A -- there was one individual at that time.

2 Q Other than coming there for that -- turning on the live,
3 have you ever seen anyone from bulk --

4 A No.

5 Q -- that you can recall?

6 A No.

7 Q How about from -- oh, we mentioned the lab. I guess
8 that's it, huh. Okay. What do you make an hour?

9 A Currently, I make \$15.12 an hour.

10 MR. CANTORE: Anything -- I don't have anything more.

11 HEARING OFFICER MEZA: Do you have any questions?

12 MR. TOPOLSKI: I need two minutes.

13 HEARING OFFICER MEZA: Okay. Off the record for two
14 minutes.

15 (Off the record at 2:25 p.m.)

16 HEARING OFFICER MEZA: Okay. Are we ready?

17 MR. TOPOLSKI: Yes.

18 HEARING OFFICER MEZA: Okay. On the record.

19 MR. TOPOLSKI: Okay.

20 **CROSS-EXAMINATION**

21 Q BY MR. TOPOLSKI: Hi, Mr. Padilla, my name is Doug
22 Topolski, and I'm counsel for Cargill. I just have a couple of
23 questions for you. I want to clarify a couple of things.

24 A Sure.

25 Q You do have an office that you work out of on a day-to-day

1 basis, correct?

2 A As of recent, I was designated and directed to stay at a
3 certain desk, probably in the last two weeks.

4 Q Okay. And is that up near area 18 on Exhibit 1 in front
5 of you?

6 A Yeah, it's within 18.

7 Q Okay. Now, is that in the shipping area or is that in
8 the -- like the front office area?

9 A Shipping/administration.

10 Q Okay. All right. So when you're up in this office area,
11 which you say varies from time-to-time, you have no idea who's
12 running around the rest of the plant?

13 A Not true, because there's times where if I'm called, I may
14 have to go in person to that person who has a need --

15 Q Okay. Now --

16 A -- to actually direct them.

17 Q -- I understand. Answer my question, please.

18 A Okay.

19 Q When you're sitting in your office up in 18 --

20 A Uh-huh.

21 Q -- you don't have any way of knowing who else is running
22 around the rest of the building, correct?

23 A Not at all times, no.

24 Q Okay. Have you ever seen maintenance mechanics in the --
25 in like area nine, or eight, or 12, or any of those areas?

1 A Yeah.

2 Q Okay.

3 HEARING OFFICER MEZA: When was the last time you saw a
4 mechanic in the production area?

5 THE WITNESS: Sometime within the last month of this year,
6 2014. I just can't pinpoint an exact date and time.

7 HEARING OFFICER MEZA: Okay. So sometime in July?

8 THE WITNESS: I would say recently on the new line -- the
9 Ole line, last week they had mechanics --

10 HEARING OFFICER MEZA: Okay.

11 THE WITNESS: -- out there.

12 HEARING OFFICER MEZA: Okay. Did you interact with them
13 or you just saw them?

14 THE WITNESS: No, I just saw them. No interact.

15 HEARING OFFICER MEZA: Okay.

16 MR. TOPOLSKI: No further questions.

17 HEARING OFFICER MEZA: Okay. So do you have any further
18 questions?

19 **REDIRECT EXAMINATION**

20 Q BY MR. CANTORE: How -- when did you get the office, two
21 weeks ago?

22 A Yeah.

23 Q How much time do you spend in there?

24 A Currently, right now, it varies day-to-day, but I would
25 say on average it could be anywhere from 50 percent, to some

1 days I could be in there 100 percent. It just depends on
2 demand and time needs.

3 Q Okay. Prior to that, where did you hang out?

4 A I was in receiving, I was in packaging, back and forth to
5 shipping, on the lines.

6 Q Okay. Prior to two weeks ago when you got this lovely
7 office, your testimony is you rarely saw people, with the
8 possible exception of mechanics --

9 A Agreed. I --

10 Q -- come from -- coming from the area across the tracks
11 into the packaging area?

12 A -- correct.

13 MR. CANTORE: Nothing further.

14 MR. TOPOLSKI: Just a couple more questions.

15 THE WITNESS: Yes.

16 **RECROSS-EXAMINATION**

17 Q BY MR. TOPOLSKI: Did you have another office before you
18 got the one in 18?

19 A Before? No, no. I have a laptop, so I just float around.

20 Q Okay. So you're just roaming around.

21 A Yeah.

22 Q Okay.

23 A Yeah.

24 MR. TOPOLSKI: No further questions.

25 HEARING OFFICER MEZA: Okay. And was yesterday a typical

1 day for you?

2 THE WITNESS: Yes.

3 HEARING OFFICER MEZA: Okay. Can you walk us through your
4 day yesterday --

5 THE WITNESS: Sure.

6 HEARING OFFICER MEZA: -- and tell us who you either
7 interacted with or saw from other -- from the different
8 departments that --

9 THE WITNESS: Okay.

10 HEARING OFFICER MEZA: -- we we're talking about here
11 today. So we're talking about maintenance, packaging,
12 receiving, terminal, shipping, quality control.

13 So just tell us -- just walk us through yesterday from
14 when you started work and start with where you clocked in, and
15 what time you clocked in, and when you left.

16 THE WITNESS: Okay. When I first started my day, I
17 initially clocked in in area 18. I immediately went to my
18 desk, warmed up my computer, read e-mails, started
19 troubleshooting from a technical standpoint any issues, started
20 getting concerns from receiving on a number of issues.

21 I then went to shipping, addressed further issues that
22 they were having, technically, with the software system. I
23 went to the new Ole line, which is in production, to see if
24 operators were actually there running that day, because I had
25 some other things I had to perform with them.

1 I then actually went in person to 17. So I went from
2 18 -- area 18 to area 10, then to area 17, and that was pretty
3 much yesterday, just troubleshooting various issues between
4 those departments.

5 HEARING OFFICER MEZA: Okay.

6 MR. CANTORE: By the way, for the record.

7 HEARING OFFICER MEZA: Yes.

8 **FURTHER REDIRECT EXAMINATION**

9 Q BY MR. CANTORE: Where are the production lines on that
10 map?

11 A They would, to some degree, go parallel with area 10,
12 going across the facility.

13 Q Okay.

14 MR. CANTORE: My point for the reader of the record is
15 that our people tend to define the production area as 10, not
16 9. Whereas, I believe their witnesses identify 9 as the
17 production area, and it's larger than that, and my point, just
18 simply for the reader of the record, that it goes into 10.

19 Q BY MR. CANTORE: Ten is probably the end of the production
20 area.

21 A Correct. Starting at nine to 10, within that width.

22 HEARING OFFICER MEZA: Okay. And where did you take your
23 break yesterday?

24 THE WITNESS: Yesterday I took my break in area 18.

25 HEARING OFFICER MEZA: In area 18 there's a break room

1 there?

2 THE WITNESS: Yeah, the --

3 HEARING OFFICER MEZA: Okay.

4 THE WITNESS: -- the shipping break room there that's
5 right there, yeah.

6 HEARING OFFICER MEZA: Okay. And maybe you answered this,
7 but I may have missed it, when was the last time you went over
8 to perform any of your work duties in -- on the side of the --
9 I guess, what you referring to is the other side of the tracks,
10 but basically it's --

11 THE WITNESS: The terminal

12 HEARING OFFICER MEZA: -- numbers one, two, seven, four,
13 three, six, 14, 13, five, or 15. When was the last time you
14 went over there to perform work?

15 THE WITNESS: It was really as a collaboration. I was
16 over in that area going to the lab. I went over there just to
17 give base knowledge feedback on a process related to where I
18 work --

19 HEARING OFFICER MEZA: Uh-huh.

20 THE WITNESS: -- and that was a long time --

21 HEARING OFFICER MEZA: When was that?

22 THE WITNESS: -- that was last week.

23 HEARING OFFICER MEZA: That was last week. Prior to that,
24 when was the last time you were over there to perform work?

25 THE WITNESS: I would say mid-May, beginning of May.

1 HEARING OFFICER MEZA: And prior to that?

2 THE WITNESS: I would spend a certain amount of time there
3 from -- I think it was end of February up until mid-May,
4 performing formal classroom training, hands-on.

5 HEARING OFFICER MEZA: Okay.

6 THE WITNESS: Yeah.

7 HEARING OFFICER MEZA: And the mechanics, you did say that
8 you saw some mechanics --

9 THE WITNESS: Correct.

10 HEARING OFFICER MEZA: -- working in the production area.

11 THE WITNESS: Right.

12 HEARING OFFICER MEZA: And you said you saw someone
13 yesterday or, no, not yesterday? It was last week?

14 THE WITNESS: No, last week.

15 HEARING OFFICER MEZA: Last week. Okay. Do you know how
16 long they were there?

17 THE WITNESS: No, I didn't keep a time on there.

18 HEARING OFFICER MEZA: You just saw them walking by and
19 that was it?

20 THE WITNESS: Yeah, yeah, yeah. I just --

21 HEARING OFFICER MEZA: Okay. How often, on a weekly
22 basis, would you say that you see mechanics in the production
23 area?

24 THE WITNESS: It could be on a -- that I see them, it's
25 all random.

1 HEARING OFFICER MEZA: Yeah, that you see them.

2 THE WITNESS: I can't put a number to it, but they're
3 there daily. When I see them, I have to be there in person, so
4 I'm probably there, right now, three days out of the week for
5 anywhere from half a day, especially with the new ole line
6 going up. So they're there periodically between other lines,
7 fixing, depalletizer, their shrink wrapper, and stuff like
8 that.

9 HEARING OFFICER MEZA: Okay. So --

10 THE WITNESS: So I just observe them from a distance, and
11 I --

12 HEARING OFFICER MEZA: -- right.

13 THE WITNESS: -- can see them.

14 HEARING OFFICER MEZA: So like last week, how many times
15 did you see --

16 THE WITNESS: We'll say three days.

17 HEARING OFFICER MEZA: -- them there last week?

18 THE WITNESS: Three days a week.

19 HEARING OFFICER MEZA: Three times you saw them there last
20 week.

21 THE WITNESS: Yeah, that I personally see them.

22 HEARING OFFICER MEZA: The week before that? The week
23 before that?

24 THE WITNESS: Probably three days.

25 HEARING OFFICER MEZA: Three days.

1 THE WITNESS: It just all depends on when I'm out there.

2 HEARING OFFICER MEZA: Okay. All right.

3 MR. CANTORE: For the record, the Union is not taking the
4 position that mechanics don't, on a regular basis, come over
5 and fix machinery --

6 HEARING OFFICER MEZA: Right. Okay.

7 MR. CANTORE: -- on the packaging side of the plant.

8 HEARING OFFICER MEZA: Right. I'm just trying to get some
9 evidence in as to just the interaction --

10 MR. CANTORE: yeah.

11 HEARING OFFICER MEZA: -- between the mechanics and the
12 other employees. And you said that your -- your job
13 classification again?

14 THE WITNESS: My title right now is shipping operator.

15 HEARING OFFICER MEZA: Shipping operator.

16 THE WITNESS: Yeah.

17 HEARING OFFICER MEZA: Okay. So you're in the shipping
18 department, right?

19 THE WITNESS: Yeah.

20 HEARING OFFICER MEZA: Okay. All right. And your health
21 benefits, as far as you know they're the same as everyone
22 else's that we've been talking about here today --

23 THE WITNESS: For what's --

24 HEARING OFFICER MEZA: -- maintenance, packaging,
25 receiving, terminal, and lag tech.

1 THE WITNESS: -- yeah. For what's available in terms of
2 choice, yes.

3 HEARING OFFICER MEZA: Okay. It's the same. All right.

4 And, let's see. Who gave you your last performance review?

5 THE WITNESS: Stephanie Puig.

6 HEARING OFFICER MEZA: Okay. When was that?

7 THE WITNESS: The week before July 23rd. Was it the 21st,
8 the 20th. It was that -- I think a Friday.

9 HEARING OFFICER MEZA: Okay. All right. Okay. I have no
10 further questions. Does anyone else have questions?

11 MR. CANTORE: I do not.

12 HEARING OFFICER MEZA: Any questions? Okay. All right.

13 Thank you.

14 THE WITNESS: Okay.

15 HEARING OFFICER MEZA: You're done. You're excused.

16 MR. CANTORE: Another minute then or two.

17 HEARING OFFICER MEZA: Okay. Off the record.

18 (Off the record at 2:35 p.m.)

19 HEARING OFFICER MEZA: Okay. On the record.

20 Okay. So now we have another witness. And we are also --

21 MR. CANTORE: This is Carlos Hernandez.

22 HEARING OFFICER MEZA: Carlos Hernandez. Okay.

23 So this is Petitioner's witness, and -- his third witness.

24 And so we are employing the use of an interpreter at this time.

25 Okay?

1 So -- now I'm just going to go ahead and just ask the
2 interpreter to tell Mr. Hernandez that the questions will all
3 be asked in English, everyone else will be speaking in English
4 and -- okay -- and you need to wait until the interpreter
5 translates the question or the statement to you and then you
6 need to go ahead and answer in Spanish or -- yes, in Spanish.
7 Okay?

8 THE WITNESS: Okay.

9 HEARING OFFICER MEZA: Okay. And can you please raise your
10 right hand?

11 Okay. I'm sorry. This is for the interpreter.

12 Okay. Can you please raise your right hand?

13 THE INTERPRETER: Sorry.

14 HEARING OFFICER MEZA: Sorry about that. It's been a long
15 day. Okay. All right. I'm sorry. Can we have the
16 interpreter please state her first name and last name for the
17 record?

18 THE INTERPRETER: Marlene Gerdts, M-A-R-L-E-N-E; Gerdts is
19 G-E-R-D-T-S.

20 HEARING OFFICER MEZA: Okay. And can you, Ms. Gerdts,
21 please raise your right hand?

22 Okay

23 (Interpreter Sworn)

24 HEARING OFFICER MEZA: Okay. And so now I'm going to go
25 ahead and have the interpreter swear in the -- the witness,

1 Mr. Hernandez.

2 Whereupon,

3 CARLOS HERNANDEZ

4 having been duly sworn, was called as a witness herein and was
5 examined and testified, by and through an interpreter as
6 follows:

7 HEARING OFFICER MEZA: Okay. And can you please state and
8 spell your name for the record?

9 THE WITNESS: C-A-R-L-O-S --

10 HEARING OFFICER MEZA: In Spanish, please.

11 THE WITNESS: C-A-R-L-O-S, H-E-R-N-A-N-D-E-Z.

12 HEARING OFFICER MEZA: Okay. Thank you.

13 Mr. Cantore, you may proceed.

14 You may lower your hand.

15 DIRECT EXAMINATION

16 Q BY MR. CANTORE: Carlos, how long have you worked for
17 Cargill?

18 A I come from working at Vernon 12 years and two years in
19 Fullerton.

20 Q Fourteen years total?

21 A Yes.

22 Q When you were at Vernon and moved to Fullerton, did your
23 benefits change in any way?

24 A No. They're the same.

25 Q Okay. And when you -- what did you do in Vernon?

- 1 A It is called rendery (phonetic) operator.
- 2 Q Is that in packaging?
- 3 A In production, yes.
- 4 Q Okay. When you moved from Vernon to Fullerton, what job
5 did you take at Fullerton?
- 6 A It will be in packaging. In five-quart packaging.
- 7 Q Okay. How long have you been -- where are you working
8 now?
- 9 A So now I've been about three months in receiving.
- 10 Q Okay. So for more than a year in packaging?
- 11 A Yes.
- 12 Q While you were working in packaging, how many times did
13 you see somebody from the lab?
- 14 A Well, when I was working in packaging, I didn't have to go
15 to that area over there in the lab.
- 16 Q Did anybody from the lab ever come over near you in
17 packaging?
- 18 A No, not me.
- 19 Q Anybody -- you ever see them there?
- 20 A Well, they do come but not for me, not with me.
- 21 Q How often did you see them come?
- 22 A Well, rarely, but they -- they've come a couple of times a
23 month sometimes.
- 24 Q Okay. Now that's the lab. Do you know -- the terminal
25 employees or the bulk employees, do you know who they are?

- 1 A Yes. I've seen them.
- 2 Q Have you ever seen them in the packaging area?
- 3 A Well, yes, they do come sometimes. Rarely, but they do
- 4 come around here.
- 5 Q When you were working in packaging, did you see the people
- 6 from shipping a lot?
- 7 A No.
- 8 Q How about receiving?
- 9 A Receiving, yes, because that's right in front from
- 10 packaging.
- 11 Q Okay. Where are you working now?
- 12 A Well, I'm working in receiving, but they moved receiving
- 13 to the area in the back. They moved it to 17 and I was in the
- 14 16 -- area 16 more or less.
- 15 Q Do you ever see anybody from the lab in receiving?
- 16 A Yes. They -- they come to do a revision or an inspection.
- 17 Q Okay. How often?
- 18 A Not frequently, but they do come. Like maybe once a week.
- 19 Q And what about the terminal operators?
- 20 A No. I seldom see them.
- 21 Q Okay. When you were in packaging, who was your immediate
- 22 supervisor?
- 23 A Before or -- well, excuse me. Before it was -- now it's
- 24 Stephanie, but before it was Gil.
- 25 Q What happened to Gil?

1 A He had some problems and he was discharged.

2 Q Okay. Stephanie has been the supervisor for how long?

3 A Since he left. About a year and a half.

4 Q Okay.

5 MR. CANTORE: I have nothing further.

6 MR. TOPOLSKI: Give me two minutes.

7 HEARING OFFICER MEZA: Okay. Off the record for two
8 minutes.

9 (Off the record at 2:52 p.m.)

10 HEARING OFFICER MEZA: Okay.

11 MR. TOPOLSKI: No questions.

12 HEARING OFFICER MEZA: You have no questions? Okay.

13 I have a few questions.

14 Okay. So -- all right. Mr. Hernandez, you stated that
15 right now you're working in receiving, correct?

16 THE WITNESS: Yes.

17 HEARING OFFICER MEZA: Okay. And, again, just real
18 quickly, can you restate what you do in receiving?

19 THE WITNESS: When the trailer arrives, I have to take the
20 product down, unload, I have to put it on hold so that they can
21 register it. So when it has already been labeled and has a
22 license, I put it in different locations.

23 HEARING OFFICER MEZA: Okay. Okay. Thank you.

24 And how much do you make per hour?

25 THE WITNESS: Sixteen-fifty.

1 HEARING OFFICER MEZA: Okay. And what break room do you
2 usually use?

3 THE WITNESS: It's in area 10 more or less.

4 HEARING OFFICER MEZA: Okay. And where do you clock in
5 usually? Usually.

6 THE WITNESS: In 16.

7 HEARING OFFICER MEZA: Where do you usually park?

8 THE WITNESS: It's around area 16. Right here in front.

9 HEARING OFFICER MEZA: Okay. And who gives you your
10 performance reviews?

11 THE WITNESS: It's Stephanie.

12 HEARING OFFICER MEZA: Did she give you your last
13 performance review?

14 THE WITNESS: Oh, on this occasion, it was Don Jesus. He
15 is superintendent.

16 HEARING OFFICER MEZA: He's the last person that gave you a
17 performance review?

18 THE WITNESS: Yes.

19 HEARING OFFICER MEZA: Okay. Who transferred you from
20 packaging to the receiving department?

21 THE WITNESS: Jaime Sedano.

22 HEARING OFFICER MEZA: Okay. Okay. He transferred you?

23 THE WITNESS: Yes.

24 HEARING OFFICER MEZA: Okay. Can you explain how that
25 happened?

1 THE WITNESS: First he told me to go and help at receiving.
2 So he left me there and that's where I'm at right now.

3 HEARING OFFICER MEZA: And did he tell you that you were
4 going to start working in receiving?

5 THE WITNESS: He told me just to help Antonio, who's the
6 person who works there, and so there I am until present.

7 HEARING OFFICER MEZA: Okay. Have you ever been
8 disciplined at work?

9 THE WITNESS: No. No, no.

10 HEARING OFFICER MEZA: Okay. When you ask for a vacation,
11 who do you ask to take time off?

12 THE WITNESS: Stephanie.

13 HEARING OFFICER MEZA: And she approves it?

14 THE WITNESS: Yes, yes. Always.

15 HEARING OFFICER MEZA: When was the last time she -- she
16 did that?

17 THE WITNESS: About a month ago.

18 HEARING OFFICER MEZA: Okay. And just to -- to be clear,
19 okay, when was the last time you went over to the other side of
20 the tracks, for lack of a better term? As -- in looking at
21 Employer's Exhibit 1, when was the last time you went over to
22 any of those areas marked as one, two, seven, four, three, six,
23 14, 13, five or 15 to perform work?

24 THE WITNESS: Could you repeat the numbers?

25 HEARING OFFICER MEZA: Yes. one, two, seven, four, three,

1 six, 14, 13, five, 15. Any area on the right side of
2 Employer's Exhibit 1 to perform work.

3 THE WITNESS: I took --

4 HEARING OFFICER MEZA: When?

5 THE WITNESS: -- a package to area 14.

6 HEARING OFFICER MEZA: When?

7 THE WITNESS: Well, it was approximately last week.

8 HEARING OFFICER MEZA: How long -- how much time did you
9 spend there?

10 THE WITNESS: So it was about ten minutes because I went to
11 deliver a package.

12 HEARING OFFICER MEZA: And before that time, when was the
13 last time?

14 THE WITNESS: Well, before it was to see Ashnard
15 (phonetic), who is the person in charge, because we went to ask
16 her some questions.

17 HEARING OFFICER MEZA: Where? What area?

18 THE WITNESS: In area --

19 HEARING OFFICER MEZA: Okay.

20 THE WITNESS: -- 14.

21 HEARING OFFICER MEZA: And when was that?

22 THE WITNESS: It was the Monday before.

23 HEARING OFFICER MEZA: Okay. And before that?

24 THE WITNESS: No. I --

25 HEARING OFFICER MEZA: You don't --

1 THE WITNESS: -- I -- rarely.

2 HEARING OFFICER MEZA: Okay. You don't remember the time
3 before that?

4 THE WITNESS: No. I --

5 HEARING OFFICER MEZA: Okay.

6 THE WITNESS: Before, no.

7 HEARING OFFICER MEZA: Okay. And you -- right now you work
8 in the receiving area; is that right?

9 THE WITNESS: Yes, in area 17.

10 HEARING OFFICER MEZA: Okay. Do you ever -- when is the
11 last time you stated that you saw terminal, anyone from
12 terminal, there in -- anywhere by your work area?

13 THE WITNESS: Well, it's been around a month. In my area?
14 No. It's been about a month.

15 HEARING OFFICER MEZA: Okay. During the day, did you
16 usually stay just in the receiving area at this time?

17 THE WITNESS: Well, the -- the trailers arrive there in the
18 docks. I have two of them. Every two hours one arrives. So,
19 therefore, I have to go to locations 10 or eight or --

20 HEARING OFFICER MEZA: Okay.

21 THE WITNESS: -- nine.

22 HEARING OFFICER MEZA: Okay. Please speak in Spanish.

23 THE WITNESS: I have to go to eight and nine to the
24 package -- packing area.

25 HEARING OFFICER MEZA: Okay. So it's -- your testimony is

1 that it's been about a month since you saw anybody from
2 terminal by your area, by your work area?

3 THE WITNESS: In my area of receiving, that's correct.

4 HEARING OFFICER MEZA: What about the production area?

5 THE WITNESS: Yes, I have seen people.

6 HEARING OFFICER MEZA: How often do you see people from
7 terminal?

8 THE WITNESS: Maybe a couple of times a month.

9 HEARING OFFICER MEZA: Okay. So you see them a couple of
10 times a month on average?

11 THE WITNESS: Yes.

12 HEARING OFFICER MEZA: Okay. What about from maintenance,
13 how often do you see maintenance people?

14 THE WITNESS: Every day because they work in the machines.

15 HEARING OFFICER MEZA: Okay. Okay. And the lab techs?

16 THE INTERPRETER: I'm sorry?

17 HEARING OFFICER MEZA: And the lab techs, how often do you
18 see the lab techs?

19 THE WITNESS: No, I never see them.

20 HEARING OFFICER MEZA: Okay. I have no further questions.

21 Do any of the parties have any further questions?

22 **DIRECT EXAMINATION** (CONTINUED)

23 Q BY MR. CANTORE: Who do you see those few times coming
24 over? Is that Mr. Lim?

25 A Which area --

1 HEARING OFFICER MEZA: He said he never sees them.

2 THE WITNESS: -- are you speaking about?

3 Q BY MR. CANTORE: When you see somebody coming over from
4 the right side of the tracks to the packaging area, is that
5 person usually Mr. Lim?

6 A Truly, I don't know who Mr. Lim is.

7 Q Okay.

8 HEARING OFFICER MEZA: He stated that he's never seen
9 anybody from the lab over on the other side.

10 MR. CANTORE: Okay. No further questions.

11 MR. TOPOLSKI: I may have a couple --

12 HEARING OFFICER MEZA: Do you have any?

13 MR. TOPOLSKI: -- but I need to talk with my client for one
14 minute.

15 HEARING OFFICER MEZA: Okay. Off the record. Off the
16 record.

17 (Off the record at 3:03 a.m.)

18 **CROSS-EXAMINATION**

19 Q MR. TOPOLSKI: Mr. Hernandez, my name is Doug Topolski and
20 I represent Cargill. And I just have a couple of questions for
21 you.

22 A Nice meeting you.

23 Q Thank you. Nice meeting you, too. Wish it was under
24 better circumstances.

25 A Me, too.

1 Q Okay. When you went from packaging to receiving,
2 was Mr. Joe Rivera in charge of receiving that?

3 A When they make the change, yes. I think we were in
4 area 16.

5 Q Right.

6 A And then we went to 17.

7 Q Okay. But Mr. Rivera was in charge of the
8 receiving at that time; correct?

9 A Yes.

10 Q Okay. And you don't know what role he had in
11 getting you transferred from packaging to receiving; do
12 you?

13 A He wasn't the one who transferred me, because I was
14 already -- the one who moved me -- who transferred me,
15 was Jaime, Jaime Sedano.

16 Q But you don't know where Jaime got his instructions
17 from; do you?

18 A No.

19 Q All right. So, you don't know whether somebody
20 told Jaime to do move you?

21 A No. I was just told, "Go help him. Go him," and
22 that was where I was left.

23 MR. TOPOLSKI: No further questions. Thank you.

24 **REDIRECT EXAMINATION**

25 Q BY MR. CANTORE: Did Jaime ever tell you to go help

1 anyone other than receiving?

2 A Well, yes. Before I would go help in Department
3 35, where they did the depalletizing; they would remove
4 the pallets.

5 Q Depalletizing?

6 A Depalletizing, yes.

7 Q And Jaime would tell you to go help them out?

8 A Yes, I would help them. And all of a sudden he
9 told me to help receiving, and that's where he left me.

10 Q Okay.

11 HEARING OFFICER MEZA: Okay. I have a couple of
12 questions.

13 Okay. So, your benefits. Do you know if you're benefits
14 are the same as the other employees, the maintenance, other
15 packaging, terminal, receiving, quality employees?

16 THE WITNESS: According to the comments and conversations
17 I've had with my coworkers; yes.

18 HEARING OFFICER MEZA: Okay. And when you transferred
19 from packaging to receiving, did your benefits change in any
20 way?

21 THE WITNESS: No. They're the same.

22 HEARING OFFICER MEZA: Okay. And you said you work in
23 receiving; right? By number 17 on Employer's Exhibit 1?

24 THE WITNESS: No --

25 HEARING OFFICER MEZA: By number 12?

1 THE WITNESS: -- I think it is more accurate to say it is
2 by 12.

3 HEARING OFFICER MEZA: Okay. And do you work out in the
4 open, or do you have an office that you work out of?

5 THE WITNESS: I work in the docks where the trailers are,
6 that's where I work.

7 HEARING OFFICER MEZA: Okay. All right. No further
8 questions. Are there any further questions?

9 MR. TOPOLSKI: None.

10 MR. CANTORE: None.

11 HEARING OFFICER MEZA: Okay. Okay. Thank you, you're
12 excused.

13 MR. TOPOLSKI: Okay. I have one more witness, but can I
14 take a break?

15 HEARING OFFICER MEZA: Yes. Off the record? How long do
16 you need?

17 MR. TOPOLSKI: Five minutes.

18 HEARING OFFICER MEZA: Five minutes.

19 (Off the record 3:10 p.m.)

20 HEARING OFFICER MEZA: Okay. On the record.

21 Okay. So, now we have Petitioner's -- this is his fourth
22 witness?

23 MR. TOPOLSKI: Yes.

24 HEARING OFFICER MEZA: Actually -- yes, fourth witness.
25 Okay. And, I'm sorry, his name, Mr. Cantore?

1 MR. CANTORE: Israel, what's your last name, Israel?

2 THE WITNESS: Ramirez.

3 MR. CANTORE: Ramirez.

4 HEARING OFFICER MEZA: Ramirez. Okay. Mr. Ramirez, would
5 you please raise your right hand?

6 **ISRAEL RAMIREZ**

7 having been duly sworn, was called as a witness herein and was
8 examined and testified as follows:

9 HEARING OFFICER MEZA: Okay. Okay. Can you please state
10 and spell your name for the record?

11 THE WITNESS: Israel, I-S-R-A-E-L.

12 HEARING OFFICER MEZA: And your last name?

13 THE WITNESS: Ramirez, R-A-M-I-R-E-Z.

14 HEARING OFFICER MEZA: Okay. Mr. Cantore, you may
15 proceed.

16 **DIRECT EXAMINATION**

17 Q BY MR. CANTORE: Israel, are you here pursuant to a
18 subpoena?

19 A Yes.

20 Q Where are you working now?

21 A Cargill.

22 Q How long have you been there?

23 A Four years.

24 Q And four years as an employee or sometimes a temp
25 and sometimes --

- 1 A I was --
- 2 Q -- an employee?
- 3 A -- there for six months as a temp and then four
- 4 years, Cargill employee.
- 5 Q So, it's four-and-a-half years --
- 6 A Right.
- 7 Q -- in total --
- 8 A Like, four-and-a-half years.
- 9 Q -- working at the -- in Vernon? And what do you
- 10 do?
- 11 A I'm a field operator.
- 12 Q And what line do you work?
- 13 A I'm on the 35-pound line.
- 14 Q Okay. And how many people are on your crew?
- 15 A Three.
- 16 Q Three? What are their positions?
- 17 A The palletizer, the field operator -- myself -- and
- 18 the put-away.
- 19 Q And clear -- I'm sorry, the?
- 20 A The put-away.
- 21 Q Put-away. And are they, typically, forklift
- 22 operators?
- 23 A Yes.
- 24 Q Okay. And does that line ever go down?
- 25 A Yes.

1 Q What happens when the line goes down?

2 A Well, I call my lead and let him know the line's
3 down so he can call maintenance. And then he calls
4 maintenance, and they come and work on the line.

5 Q How long is it usually down for?

6 A It can be, like, from ten minutes to two hours.

7 Q Okay. And for -- when it's down for, let's say, an
8 hour?

9 A Right.

10 Q All the three of you just stand around twiddling
11 your thumbs?

12 A No.

13 Q Who tells you what to do?

14 A Imus (phonetic) will tell us when a different guy
15 needs help.

16 HEARING OFFICER MEZA: Imus, what is the last name?

17 THE WITNESS: Imus Donald, my lead, he'll assign us to
18 different positions, depending on who needs help.

19 Q BY MR. CANTORE: So, take the palletizer, send him
20 somewhere; take the guy on the forklift --

21 A Max.

22 Q -- and send him somewhere?

23 A Right.

24 Q And what about you, what happens with you?

25 A Most of the time I stay with the mechanic and see

- 1 what's going on, see if I can assist.
- 2 Q Tell the mechanic what's wrong?
- 3 A Yes.
- 4 Q What's not working?
- 5 A Right.
- 6 Q Okay. And now, let's go back before the Union was
- 7 there, knocking on the door. How was Saturday overtime
- 8 given out?
- 9 A Well --
- 10 HEARING OFFICER MEZA: I'm sorry, let's get an actual time
- 11 frame.
- 12 Q BY MR. CANTORE: Well --
- 13 HEARING OFFICER MEZA: Can we actually state a specific
- 14 time period?
- 15 Q BY MR. CANTORE: More than a month ago, how was
- 16 overtime given out?
- 17 A Well, sometimes they would let us know -- schedule
- 18 overtime, so, we would know ahead. Sometimes it would
- 19 be like: Let's say the machine broke, down so we need
- 20 to catch up, Jaime will just tell me, "Hey, you got to
- 21 come on Saturday." And so, we'll show up on Saturday.
- 22 Q And now they ask for volunteers?
- 23 A Most of the time, they do.
- 24 Q Now?
- 25 A Yes.

- 1 Q Do you know any of the people in the lab?
- 2 A Yes. Well -- Steve and --
- 3 HEARING OFFICER MEZA: Do you know his last name?
- 4 THE WITNESS: Lim?
- 5 HEARING OFFICER MEZA: Okay.
- 6 Q BY MR. CANTORE: Do you see Steve in the packaging
- 7 area, much?
- 8 A Lately? Yes. I see him, like, once every couple
- 9 of days.
- 10 Q And how long is he there?
- 11 A He just walks by.
- 12 Q And do you see what he's doing?
- 13 A Walking by.
- 14 Q That's it?
- 15 A He's -- sometimes he's walking with the rabbi,
- 16 that's about it. I don't really --
- 17 Q Do you ever interact with him?
- 18 A No.
- 19 Q Okay. So, you do interact with the mechanic;
- 20 right?
- 21 A Yes.
- 22 Q You tell him this is broke, that's broke. But
- 23 Steve, you never interact with?
- 24 A Right.
- 25 Q How often do you go over to the other side of the

1 tracks?

2 A For work related?

3 Q For any reason, whatsoever. Then we'll get to what
4 they related to?

5 A For HR.

6 Q How often do you go to HR?

7 A Like, once every month.

8 Q And what do you go there for? What's your reason?

9 A Questions, concerns.

10 Q What else?

11 A For meetings.

12 Q Where are the meetings held?

13 A Right outside the office of HR.

14 Q On building 14 on that little map in front of you?

15 A Yes.

16 Q What other reasons you go over there?

17 A That's it.

18 Q That's it?

19 HEARING OFFICER MEZA: Okay, let's just let the
20 record state that he was looking at Employer's Exhibit 1
21 which is in front of him.

22 Q BY MR. CANTORE: Did the Union come soliciting the
23 employees do you know or did the employees go solicit
24 the Union?

25 MR. TOPOLSKI: Objection, relevancy.

1 HEARING OFFICER MEZA: How is that relevant?

2 MR. CANTORE: Well I think one of the tests is
3 whether or not the employees -- how should I put it, the
4 extent of organization --

5 HEARING OFFICER MEZA: I don't --

6 MR. CANTORE: -- if they were self-organizing. I
7 think that is relevant to the community of interest.

8 HEARING OFFICER MEZA: How so? I don't understand
9 how it is that relevant?

10 MR. CANTORE: Well we -- I will make an offer of
11 proof then. We intend to show that the employees here
12 pretty much self-organized they came knocking on the
13 door and the only people that came knocking on the door
14 are packaging and receiving I mean packaging, receiving,
15 and shipping. Nobody from bulk --

16 HEARING OFFICER MEZA: Okay --

17 MR. CANTORE: Nobody from --

18 HEARING OFFICER MEZA: -- you can ask a couple of
19 questions on this but I really don't see how it is
20 relevant.

21 MR. TOPOLSKI: You know, were is the other issue --

22 HEARING OFFICER MEZA: Yeah.

23 MR. TOPOLSKI: -- if he is going to start asking
24 questions about that then I could start asking questions
25 about extent of organizing and that's going to go into

1 areas I am sure no one wants to go into.

2 HEARING OFFICER MEZA: Okay.

3 MR. CANTORE: Okay, I withdraw the question, how is
4 that?

5 HEARING OFFICER MEZA: Let's just drop it. Okay,
6 thank you.

7 MR. CANTORE: I have no other questions.

8 HEARING OFFICER MEZA: No other questions, okay.

9 MR. TOPOLSKI: I need two minutes.

10 HEARING OFFICER MEZA: Off the record.

11 (Off the record at 3:31 p.m.)

12 HEARING OFFICER MEZA: All right. Okay. Are you ready?

13 MR. TOPOLSKI: No questions.

14 HEARING OFFICER MEZA: No questions?

15 MR. TOPOLSKI: No questions.

16 HEARING OFFICER MEZA: Okay. I do have some questions.

17 All right. Okay. So on the record. We're on the record?

18 Okay. All right. So -- now, Mr. Ramirez, can you state
19 again who is your supervisor?

20 THE WITNESS: Stephanie.

21 HEARING OFFICER MEZA: Stephanie Puig?

22 THE WITNESS: Yes.

23 HEARING OFFICER MEZA: Okay. And in terms of your
24 compensation, how much do you get paid an hour?

25 THE WITNESS: Sixteen-ninety-two.

1 HEARING OFFICER MEZA: Sixteen-ninety-two?

2 THE WITNESS: Yes.

3 HEARING OFFICER MEZA: Okay. Where do you clock in for
4 work?

5 THE WITNESS: Sixteen. Where 16's at.

6 HEARING OFFICER MEZA: Where 16 is at?

7 THE WITNESS: Sixteen.

8 HEARING OFFICER MEZA: Yeah.

9 THE WITNESS: Yes.

10 HEARING OFFICER MEZA: Just speak a little louder, please.

11 THE WITNESS: All right.

12 HEARING OFFICER MEZA: Okay. So on Employer's
13 Exhibit Number 1, where 16's at?

14 THE WITNESS: Yes.

15 HEARING OFFICER MEZA: Okay. And, let's see, the benefits,
16 as far as you know, are your benefits the same as the other
17 individuals that you work with, such as -- or the other
18 individuals that work at the facility that work in packaging,
19 maintenance, receiving, terminal, shipping and quality control,
20 as far as you know --

21 THE WITNESS: As far as --

22 HEARING OFFICER MEZA: -- it's the same?

23 THE WITNESS: -- I know, yes.

24 HEARING OFFICER MEZA: Okay. And the break room, what
25 break room do you usually use on a daily basis?

1 THE WITNESS: It's -- it's like around 10, where 10's at.
2 HEARING OFFICER MEZA: Where 10 is at? Where one --
3 THE WITNESS: Yes.
4 HEARING OFFICER MEZA: -- of the 10s is at?
5 THE WITNESS: Yeah, one of the 10s.
6 HEARING OFFICER MEZA: Okay.
7 MR. CANTORE: The right-hand side.
8 HEARING OFFICER MEZA: The one that's on the right side?
9 THE WITNESS: Yes.
10 HEARING OFFICER MEZA: Okay. There's a break room there?
11 THE WITNESS: Yes.
12 HEARING OFFICER MEZA: And that's the one you usually use?
13 THE WITNESS: Yes.
14 HEARING OFFICER MEZA: Okay. Who else usually uses that
15 break room? What other departments?
16 THE WITNESS: Packaging --
17 HEARING OFFICER MEZA: Uh-huh.
18 THE WITNESS: -- receiving --
19 HEARING OFFICER MEZA: Uh-huh.
20 THE WITNESS: -- occasionally someone from shipping.
21 HEARING OFFICER MEZA: Uh-huh. Do the lab techs ever use
22 that?
23 THE WITNESS: No.
24 HEARING OFFICER MEZA: Okay. And what about terminal, do
25 they ever use that break room, as far as you know?

1 THE WITNESS: No.

2 HEARING OFFICER MEZA: Okay. And where do you park?

3 THE WITNESS: In front of 16.

4 HEARING OFFICER MEZA: Okay. Who gave you your last
5 performance review?

6 THE WITNESS: Stephanie.

7 HEARING OFFICER MEZA: Okay. Puig?

8 THE WITNESS: Yes.

9 HEARING OFFICER MEZA: When was that approximately?

10 THE WITNESS: Like six -- like eight months ago.

11 HEARING OFFICER MEZA: Okay. Okay. And most of the -- the
12 majority of your day is spent in what area?

13 THE WITNESS: It would be like between 10 and nine.

14 HEARING OFFICER MEZA: Between 10 and nine?

15 THE WITNESS: Yes.

16 HEARING OFFICER MEZA: That's where you spend, what, 100
17 percent of your day or 90 percent or --

18 THE WITNESS: A 100 --

19 HEARING OFFICER MEZA: -- how much --

20 THE WITNESS: Like 100.

21 HEARING OFFICER MEZA: One hundred percent of your day --

22 THE WITNESS: Yes.

23 HEARING OFFICER MEZA: -- is spent between that area?

24 THE WITNESS: Yes.

25 HEARING OFFICER MEZA: Okay. All right. Okay. Okay. I

1 have no further questions.

2 Do either of you have any questions for this witness?

3 MR. CANTORE: No.

4 MR. TOPOLSKI: No.

5 HEARING OFFICER MEZA: Okay. All right. You're excused,
6 Mr. Ramirez. Thank you.

7 THE WITNESS: Thank you.

8 HEARING OFFICER MEZA: Okay. Are there any other
9 witnesses?

10 MR. CANTORE: Nope.

11 HEARING OFFICER MEZA: Okay.

12 MR. TOPOLSKI: Yes. I have some minutes of rebuttal.

13 HEARING OFFICER MEZA: Okay. Who are you re-calling?

14 MR. TOPOLSKI: Ms. Puig.

15 HEARING OFFICER MEZA: Okay. Ms. Puig, can you please take
16 the stand?

17 MR. TOPOLSKI: She's had so much fun doing this, she wants
18 to come back and do it some more.

19 HEARING OFFICER MEZA: Okay. Ms. Puig, you're still under
20 oath.

21 THE WITNESS: Okay.

22 HEARING OFFICER MEZA: Okay, are you ready?

23 MR. TOPOLSKI: Yes, I am.

24 HEARING OFFICER MEZA: Okay.

25 Whereupon,

1 STEPHANIE PUIG-MIER

2 having been previously sworn, was called as a witness herein
3 and was examined and testified as follows:

4 DIRECT EXAMINATION

5 Q BY MR. TOPOLSKI: You just heard Mr. Ramirez talk about
6 how Saturday overtime is assigned, correct?

7 A Yes.

8 Q Can you fill in the details in this and tell us how
9 overtime is assigned in your department and the way you do it?

10 A So the schedule is made by Kelli Stiver. If we have, oh,
11 EDT or something happens where we're not meeting the schedule,
12 then if we don't already have a Saturday scheduled, then we
13 will need to run through --

14 Q Who decides --

15 A -- to make up from that.

16 Q -- whether there's a Saturday schedule made?

17 A Kelli will say, "We're not" -- "We're not meeting it." So
18 she'll talk to me and then we'll decide what lines we're not
19 meeting demand on and what lines I would need to run.

20 Q And what --

21 A If we -- oh, sorry.

22 Q Go ahead. No. Go ahead. Finish up.

23 A If we're not able to give enough notice, we ask for
24 volunteers to run the lines.

25 Q What role does Mr. Sedano play in all this?

1 A If we are going to take volunteers, I request that he puts
2 them on a sheet of paper so that I know who will be here, who
3 -- on a Saturday, because it's not a scheduled run. And then
4 since I approve payroll, I need to know who should be on site.

5 Q Does he have any other role in -- in scheduling Saturday
6 overtime?

7 A No, it's -- it's pretty much on demand. If we don't make
8 for a certain line what we need, we're going to have to
9 continue to run.

10 MR. TOPOLSKI: No further questions.

11 HEARING OFFICER MEZA: Do you have any questions for this
12 witness?

13 MR. CANTORE: Nothing.

14 HEARING OFFICER MEZA: Okay. All right. You're excused,
15 Ms. Puig. Thank you.

16 Okay. So we have no further witnesses at this time?

17 MR. CANTORE: We don't.

18 MR. TOPOLSKI: I'd close the record if I were you, and as
19 quickly as possible.

20 HEARING OFFICER MEZA: All right. Okay. So --

21 Okay. Could the Employer please state for the record the
22 total number of employees in the petitioned-for unit? So that
23 would be production, shipping and receiving.

24 Do we need to go off the record?

25 MR. TOPOLSKI: Maybe not.

1 HEARING OFFICER MEZA: Okay.

2 MR. TOPOLSKI: You're talking about the petitioned-for
3 unit --

4 HEARING OFFICER MEZA: Yes.

5 MR. TOPOLSKI: -- as the Union defined it this morning?
6 And that is as petitioned, correct?

7 HEARING OFFICER MEZA: Correct.

8 MR. TOPOLSKI: All right. The number that I get, based
9 upon Employer's Exhibit 2, appears to be 43.

10 HEARING OFFICER MEZA: Okay.

11 MR. TOPOLSKI: Is that about right?

12 MR. CANTORE: I'm still counting, but I think that's high.

13 HEARING OFFICER MEZA: Yeah. So that would be packaging,
14 shipping and receiving.

15 MR. TOPOLSKI: Oh, you know what, that's right, because
16 I've got the terminal in there. I'm sorry.

17 HEARING OFFICER MEZA: And let's -- let's just break it
18 down by number. So --

19 MR. TOPOLSKI: It would be 35.

20 HEARING OFFICER MEZA: Okay. 35. Okay.

21 And -- okay. So that's 35 total in the petitioned-for unit
22 as amended this morning, correct?

23 MR. TOPOLSKI: Correct.

24 HEARING OFFICER MEZA: Okay. Could the Employer please
25 state for the record the total number of employees in the unit

1 that the Employer asserts is appropriate for the purposes of
2 collecting bargain -- collective bargaining?

3 MR. TOPOLSKI: That would be approximately 51, not counting
4 the Vernon employees.

5 HEARING OFFICER MEZA: Fifty-one. So 51 who currently --
6 51 employees who currently work at the Employer's facility in
7 Fullerton, California, correct?

8 MR. TOPOLSKI: Correct.

9 HEARING OFFICER MEZA: Okay. And the 35, those 35 work --
10 currently work at the Employer's Fullerton facility --

11 MR. TOPOLSKI: Correct.

12 HEARING OFFICER MEZA: -- correct? All right.

13 MR. TOPOLSKI: Correct. Neither number includes the Vernon
14 number --

15 HEARING OFFICER MEZA: Neither number.

16 MR. TOPOLSKI: -- the Vernon employees listed on Employer's
17 Exhibit 2.

18 HEARING OFFICER MEZA: Okay. Could the Employer please
19 state for the record the total number of employees in each
20 disputed category starting with maintenance employees?

21 MR. TOPOLSKI: There are four current employees and one
22 open.

23 HEARING OFFICER MEZA: Okay. There are four -- I'm sorry.
24 Four what?

25 MR. TOPOLSKI: Four current employees and one open

1 position.

2 HEARING OFFICER MEZA: Okay. And quality control
3 employees?

4 MR. TOPOLSKI: There are four.

5 HEARING OFFICER MEZA: Okay. Terminal employees?

6 MR. TOPOLSKI: Let me make -- let me double count.
7 I have eight.

8 HEARING OFFICER MEZA: Okay. And packaging leads?

9 MR. TOPOLSKI: Two.

10 HEARING OFFICER MEZA: Two. And they're in the packaging
11 department, correct?

12 MR. TOPOLSKI: Correct. They're within the -- the
13 employees --

14 HEARING OFFICER MEZA: Okay.

15 MR. TOPOLSKI: -- listed here, that's right.

16 HEARING OFFICER MEZA: Shipping leads?

17 MR. TOPOLSKI: One.

18 HEARING OFFICER MEZA: Okay. And that person's in the
19 shipping department, correct?

20 MR. TOPOLSKI: Correct.

21 HEARING OFFICER MEZA: Okay. All right. Does the
22 Petitioner wish to proceed to an election in any alternate unit
23 if the unit sought by the -- sought by the Petitioner is deemed
24 to be inappropriate?

25 MR. CANTORE: No.

1 HEARING OFFICER MEZA: Okay. All right. So the matters
2 still at issue here and are as follow: Whether the packing and
3 shipping employees share an overwhelming community of interest
4 under Specialty Healthcare with the receiving maintenance,
5 terminal and quality control employees so as to be included in
6 a single unit for purposes of collective bargaining.

7 And, again, the question is what is the appropriate unit.
8 The Employer maintains that the appropriate unit consists of
9 packing, shipping, maintenance, terminal and quality control
10 employees. The Employer is seeking a wall-to-wall unit. And
11 the Employers -- Employer asserts that the employees in these
12 six job classifications all share an overwhelming community of
13 interest and should be in the same bargaining unit.

14 And while the Union concedes the six job classifications
15 share some community of interest, it also asserts that they
16 barely speak to each other and the Union is satisfied that a
17 unit consisting of only packaging, shipping and receiving
18 employees is appropriate even if not the most appropriate one.

19 The other issue is whether the packaging leads, Jaime
20 Sedano and Rafael Rodriguez, a shipping lead Ray Ramirez and
21 Steve Lim, who works in the quality control department, are
22 supervisors under the Act. The Union is seeking to exclude the
23 packaging leads, the shipping leads and Steve Lim on the basis
24 that they are supervisors under Section 211 of the Act.

25 The Employer denies that the packaging leads, the shipping

1 leads and that Steve Lim are supervisors under the Act and
2 maintains that they are employees under the Act.

3 Can the parties briefly restate their positions regarding
4 the outstanding issues for the record? And whoever wants to go
5 first.

6 MR. CANTORE: I will repeat the position that --

7 HEARING OFFICER MEZA: Okay.

8 MR. CANTORE: -- the leads are supervisors, that the
9 packaging, shipping and receiving is an appropriate unit. And
10 we also do not believe that one additional employee, Kimberly
11 Cruz, is in the packaging unit even though she's listed here.
12 She works in engineering, works on the other side of the tracks
13 and I don't know why she's in packaging.

14 HEARING OFFICER MEZA: Okay. Wait. So are you raising a
15 whole new issue at this time?

16 MR. CANTORE: I am saying we're going to challenge her when
17 she votes.

18 HEARING OFFICER MEZA: Okay.

19 MR. CANTORE: Nothing more than that.

20 HEARING OFFICER MEZA: Okay. That's all you're saying?

21 MR. CANTORE: Yes.

22 HEARING OFFICER MEZA: Okay. All right. Okay. Anything
23 else? Okay. Mr. Topolski?

24 MR. TOPOLSKI: Our -- our position hasn't changed since the
25 beginning of the hearing. I believe that the Union -- that the

1 Union's unit is inappropriate, it's not the one originally
2 petitioned for, it's not the one that they talked about before
3 we came to this hearing. And I believe that the appropriate
4 unit should be maintenance, packaging, receiving, terminal,
5 shipping, quality as listed on Employer's Exhibit 2 with all
6 leads included in the unit.

7 HEARING OFFICER MEZA: Okay. Is there anything further
8 that the parties desire to present?

9 Mr. Topolski, anything further?

10 MR. TOPOLSKI: I just will say one thing. If -- if the
11 Union's observing the right to challenge Kimberly Cruz --

12 HEARING OFFICER MEZA: Okay. Just one second. Can we just
13 have it quiet?

14 MR. TOPOLSKI: If the Union's reserving the right to
15 challenge Kimberly Cruz, I'm going to observe the right to
16 challenge Carlos Alban under the same -- same circumstances.

17 HEARING OFFICER MEZA: Okay. Well, I mean that's not
18 something that we, you know --

19 MR. TOPOLSKI: I'm just saying.

20 HEARING OFFICER MEZA: Okay. All right. Noted.

21 Anything else?

22 MR. TOPOLSKI: No. That's it.

23 HEARING OFFICER MEZA: Mr. Cantore?

24 MR. CANTORE: One second. I want to speak to my client.

25 You asked about whether --

1 HEARING OFFICER MEZA: Off the record then?

2 MR. CANTORE: -- we want to go forward in another unit, and
3 now he's having second thoughts. So why don't we --

4 HEARING OFFICER MEZA: Do we need to go off the record?

5 MR. CANTORE: We need to go off the record --

6 HEARING OFFICER MEZA: Okay.

7 MR. CANTORE: -- for a minute.

8 HEARING OFFICER MEZA: Off the record.

9 MR. CANTORE: That's fine.

10 (Off the record at 3:46 p.m.)

11 HEARING OFFICER MEZA: Okay. On the record.

12 Okay. So, Mr. Cantore, you were just discussing off the
13 record whether you wanted to change your --

14 MR. CANTORE: I would not.

15 HEARING OFFICER MEZA: -- position on accepting an
16 alternate unit. Okay. So, no?

17 MR. CANTORE: No.

18 HEARING OFFICER MEZA: Your answer's still the same? Okay.

19 All right. Let's see here. Okay. So I think the last
20 question was whether there's anything further the parties
21 desire to present.

22 MR. CANTORE: And the answer's no.

23 MR. TOPOLSKI: The answer's no.

24 HEARING OFFICER MEZA: Okay. So both parties stated no.

25 And do the parties wish to waive the filing of briefs?

1 MR. CANTORE: No.

2 MR. TOPOLSKI: No.

3 HEARING OFFICER MEZA: Okay. And the briefs will be due --
4 briefs will be due on August 19th, 2014. And that's seven days
5 from today, correct? All right.

6 Okay. Mr. Topolski, have all exhibits been offered?

7 MR. TOPOLSKI: Yes.

8 HEARING OFFICER MEZA: Okay. And, Mr. Cantore, have all
9 exhibits --

10 MR. TOPOLSKI: Let's check the record.

11 HEARING OFFICER MEZA: -- been offered?

12 MR. TOPOLSKI: Exhibits 1 and 2 is all I have. I believe
13 they've been offered and introduced, correct? Were they?

14 HEARING OFFICER MEZA: Yes. Okay.

15 MR. CANTORE: And all of mine, two exhibits?

16 HEARING OFFICER MEZA: Okay. So both Employer's Exhibit 1
17 and 2 have been received and Petitioner's Exhibit 1 and 2 have
18 been received into the record. Okay. So if there is nothing
19 further, the hearing will be closed.

20 MR. TOPOLSKI: Yeah.

21 MR. CANTORE: Yeah.

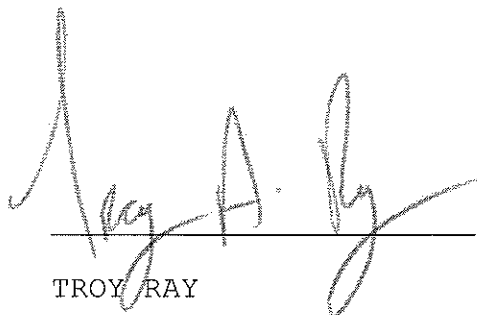
22 HEARING OFFICER MEZA: Hearing no response, the hearing is
23 now closed.

24 **(Whereupon, the hearing in the above-entitled matter was closed**
25 **at 3:54 p.m.)**

C E R T I F I C A T I O N

1
2 This is to certify that the attached proceedings before the
3 National Labor Relations Board (NLRB), Region 21, Case Number
4 21-RC-133636, Cargill, Inc. and United Food & Commercial
5 Workers Union Local No. 324, at the National Labor Relations
6 Board, Region 21, 888 South Figueroa Street, Los Angeles,
7 California 90017, on Tuesday, August 12, 2014, at 9:14 a.m.
8 was held according to the record, and that this is the
9 original, complete, and true and accurate transcript that has
10 been compared to the reporting or recording, accomplished at
11 the hearing, that the exhibit files have been checked for
12 completeness and no exhibits received in evidence or in the
13 rejected exhibit files are missing.

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TROY RAY

Official Reporter

Re: Cargill
Case 21-RC-133636

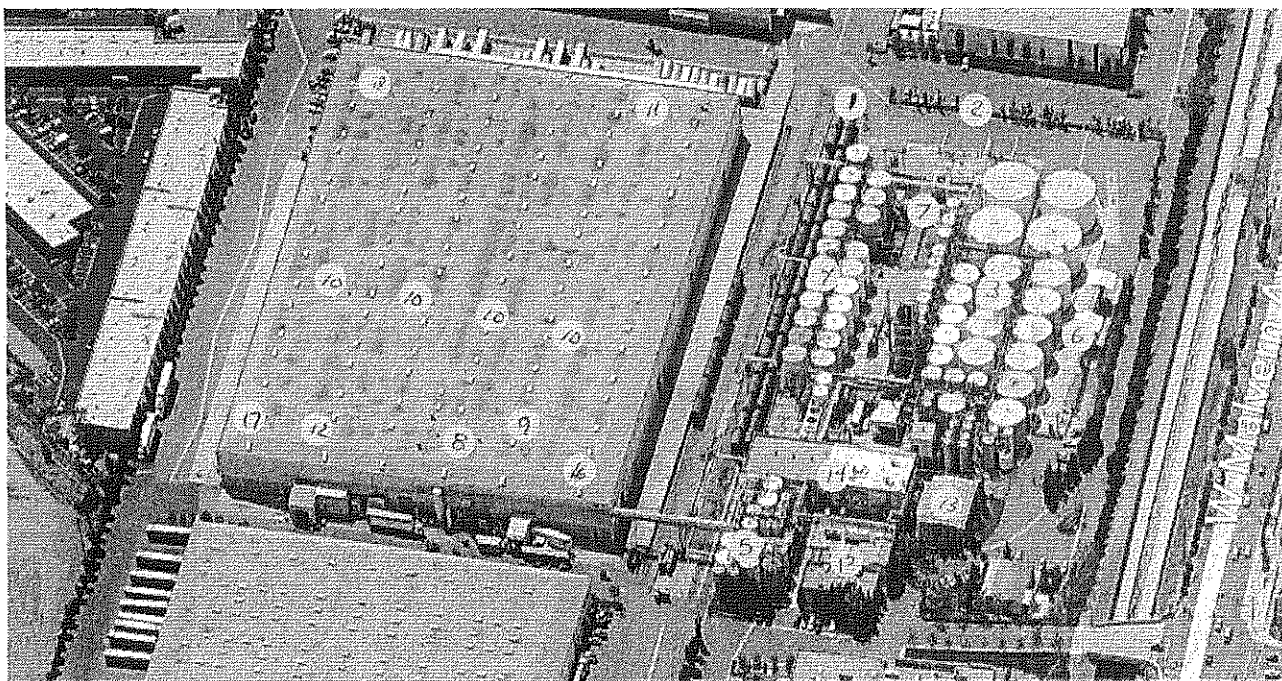
BOARD EXHIBIT NO. 1

INDEX
AND
DESCRIPTION OF FORMAL DOCUMENTS

- Exhibit 1(a) Original Petition 21-RC-133636
filed on July 28, 2014.
- Exhibit 1(b) Notice of Representation Hearing
with Form NLRB-4669 attached
Dated July 29, 2014.
- Exhibit 1(c) Affidavit of Service for 1(b)
dated July 29, 2014
- Exhibit 1(d) Order Rescheduling Hearing
dated July 31, 2014
- Exhibit 1(e) Affidavit of Service for 1(d)
dated July 31, 2014
- Exhibit 1(f) Index and Description of
Formal Documents

Bd. Exh. 1(g)

DSO Fullerton Facility

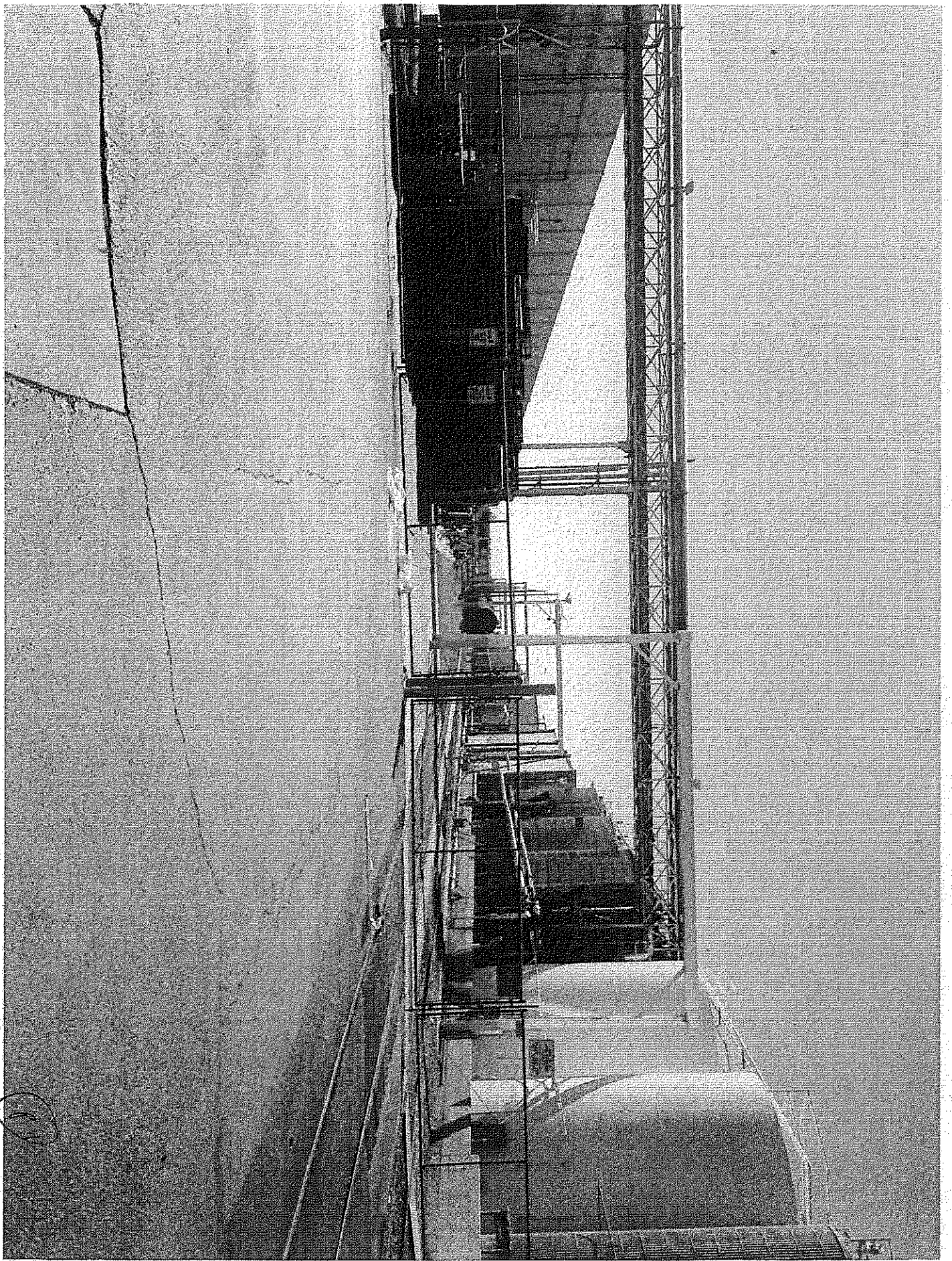


EMP 1

First Name	Middle	Last Name	Supervisor	Shift	Department
Felix	E	Asuncion	Dan Sparks	First	Maintenance
Cristian		Ayala-Berumen	Dan Sparks	Third	Maintenance
Paul		Crumley	Dan Sparks	First	Maintenance
George	V	Trevino	Dan Sparks	Second	Maintenance
Alvaro	J	Alcala	Stephanie Puig	First	Packaging
Mauricio		Alvarez	Stephanie Puig	Second	Packaging
Gerardo		Carranza	Stephanie Puig	First	Packaging
Luis		Contreras-Zepeda	Stephanie Puig	third	Packaging
Nicholas	R	Craft	Stephanie Puig	First	Packaging
Kimberly	R	Cruz	Stephanie Puig	First	Packaging
Erika	Vanessa	Medina	Stephanie Puig	Second	Packaging
Tlari	T	Moore	Stephanie Puig	First	Packaging
Edward	C	Mulvey	Stephanie Puig	First	Packaging
Julio		Munoz	Stephanie Puig	Second	Packaging
Brandon	P	Nubia	Stephanie Puig	Third	Packaging
Allan	A	Perez	Stephanie Puig	Third	Packaging
Cesar		Perez	Stephanie Puig	First	Packaging
Amulfo	M	Pina	Stephanie Puig	First	Packaging
Israel	C	Ramirez	Stephanie Puig	First	Packaging
Rafael	S	Rodriguez	Stephanie Puig	Second	Packaging
Rodolfo		Rojas	Stephanie Puig	First	Packaging
Guadalupe	S	Sanchez	Stephanie Puig	Second	Packaging
David		Santacruz	Stephanie Puig	Second	Packaging
Jaime		Sedano	Stephanie Puig	First	Packaging
Ramiro	B	Perez	Stephanie Puig	First	Packaging
Andres		Solano	Stephanie Puig	First	Packaging
James	M	West	Stephanie Puig	First	Packaging
Carlos	M	Alban	Stephanie Puig	First	Receiving
Antonio		Hernandez	Stephanie Puig	First	Receiving
Carlos	F	Hernandez	Stephanie Puig	First	Receiving
Jonathan		Alvarado	Stephanie Puig	Third	Terminal
Cervando		Antunez	Stephanie Puig	First	Terminal
Mike	R	Brown	Stephanie Puig	First	Terminal
Daniel	R	Castanon	Stephanie Puig	First	Terminal
Ernesto	B	Rivera	Stephanie Puig	First	Terminal
Roman	David	Smith	Stephanie Puig	First	Terminal
Daniel	D	Verdugo	Stephanie Puig	First	Terminal
Jaimar	J	Williams	Stephanie Puig	Second	Terminal
Josh	A	Ennulat	Stephanie Puig	First	Shipping
Carlos	A	Espinoza	Stephanie Puig	First	Shipping
Leonardo	R	Garcia	Stephanie Puig	First	Shipping
Eddie	Nathan	Padilla	Stephanie Puig	First	Shipping
Alberto		Ramirez	Stephanie Puig	First	Shipping
Raymond	F	Ramirez	Stephanie Puig	First	Shipping
Oscar		Ramos	Stephanie Puig	First	Shipping
Charles	Tim	Talbert	Stephanie Puig	First	Shipping
Donna	L	Teuscher	Stephanie Puig	First	Shipping
Bullus	M	Gago	Open	Third	Quality
Jason	T	Duong	Open	First	Quality
Amanda	Grace	Moss	Open	First	Quality
Steve	C	Lim	Open	First	Quality
Catalina		Rosales	Stephanie Puig	First	Admin
Sergio		Gutierrez	Stephanie Puig	First	Production
Hugo		Perafan	Stephanie Puig	First	Production
Gilberto		Suazo	Stephanie Puig	First	Production
Michael	D	Canelo	Stephanie Puig	First	Receiving
Joel	A	Argueta	Stephanie Puig	First	Terminal
Lorenzo	A	Hernandez	Stephanie Puig	First	Terminal

Vernon

Emp 2



1000

600 N Gilbert St
Fullerton, CA 92833

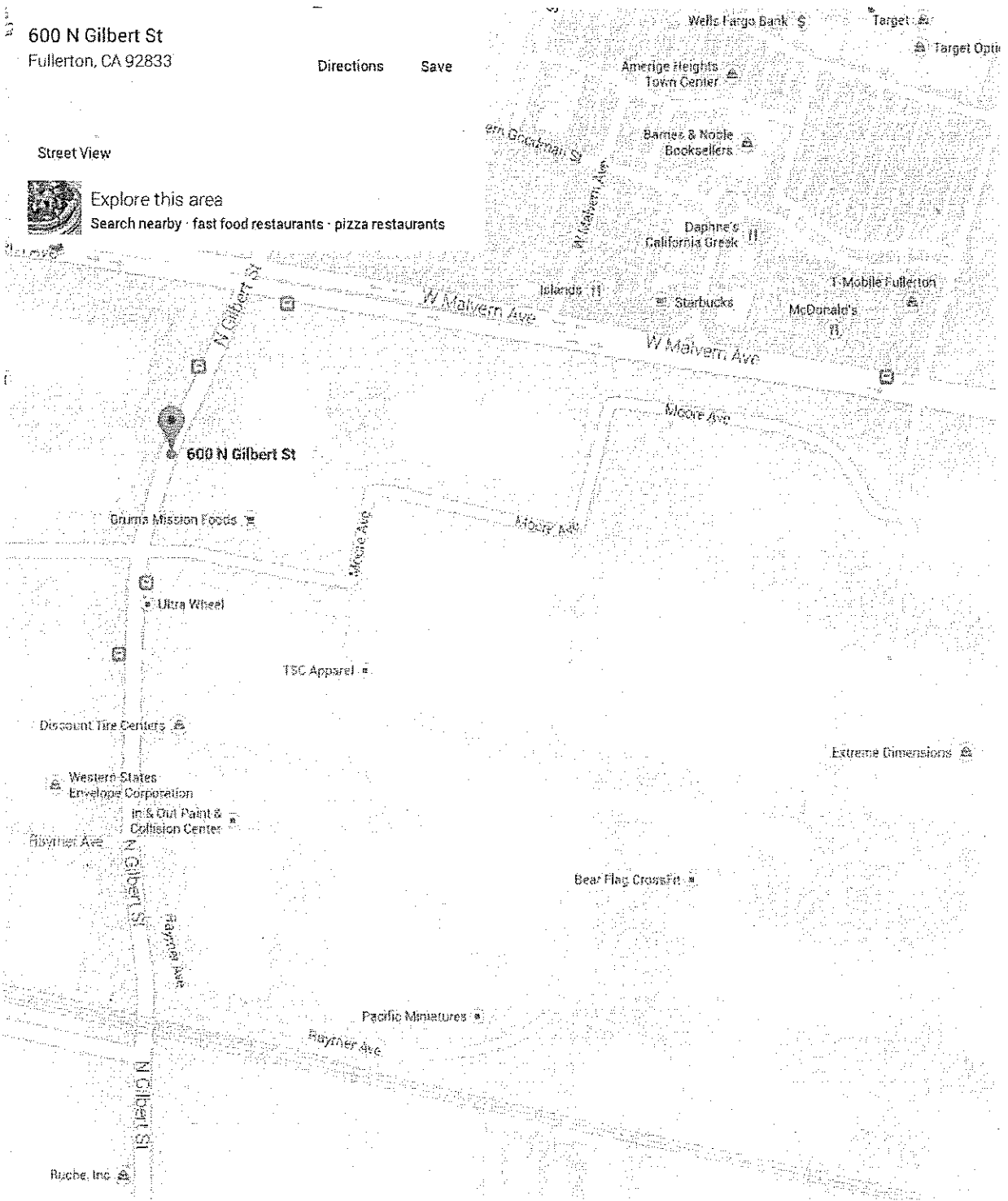
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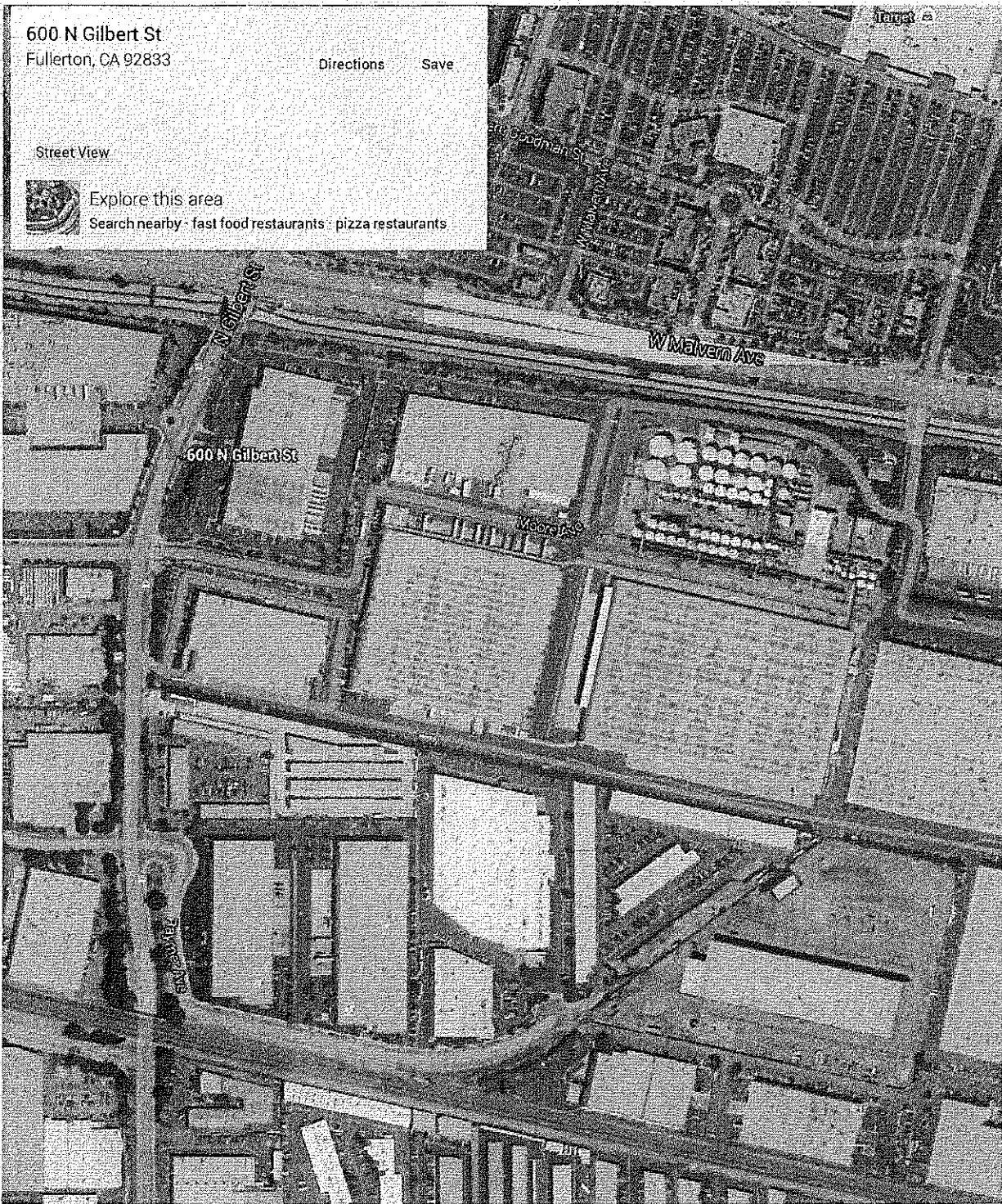
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union
2

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Fullerton, CA 92833

Directions

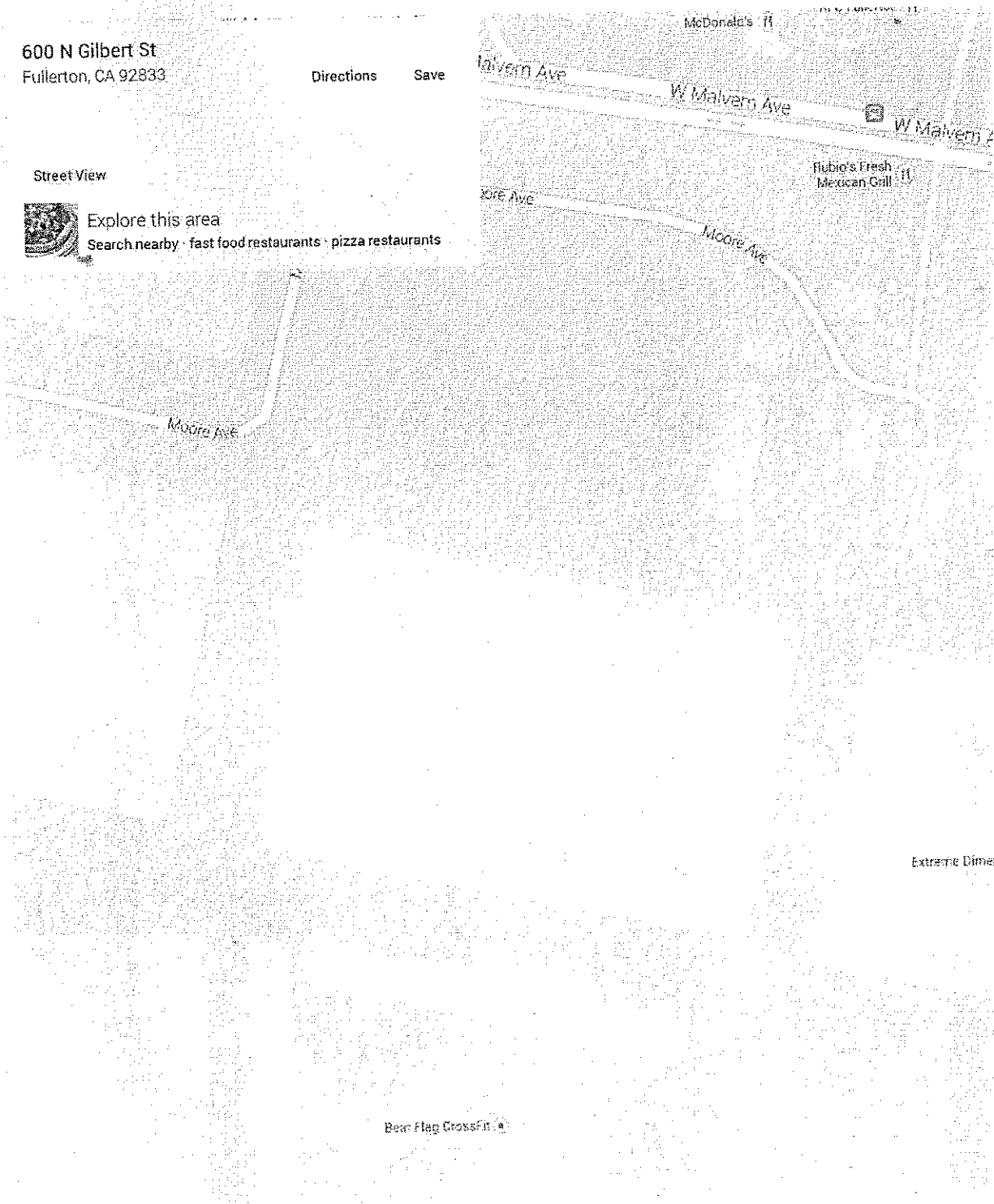
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Exhibit 19

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

CASE NO. 21-RC-133636

Cargill, Inc.

and

United Food &
Commercial Workers
International Union,
Local No. 324

POST-HEARING BRIEF OF CARGILL, INC.

Prepared by:

OGLETREE, DEAKINS, NASH,
SMOAK AND STEWART, P.C.

Douglas M. Topolski, Esquire
1909 K Street, Suite 1000
Washington, DC 20006
202.263.0242 (phone)
202.887.0866 (fax)

Ruth L. Goodboe, Esquire
34977 Woodward Avenue, Suite 300
Birmingham, Michigan 48009
248.723.6143 (phone)
248.593.2603 (fax)

Attorneys for Cargill, Inc.

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**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 21**

In the Matter of:

CARGILL, INC.,

Employer,

and

Case No. 21-RC-133636

**UNITED FOOD & COMMERCIAL
WORKERS UNION LOCAL NO. 324,**

Petitioner.

EMPLOYER'S POST HEARING BRIEF

Employer Cargill, Inc., (the "Employer"), through undersigned counsel, respectfully submits this post hearing brief. For the reasons discussed below, the Regional Director should decline to employ the test set out in *Specialty Healthcare and Rehabilitation Ctr. of Mobile*, 357 NLRB No. 83, 2011 NLRB LEXIS 489 (2011) and use the community of interest standard that has been accepted by the National Labor Relations Board ("the Board") for decades. Additionally, and regardless of the standard used, the Regional Director should reject the Union's proposed unit as not appropriate. The Regional Director should order an election only in a unit that includes all packaging, shipping, receiving, maintenance, lead, terminal, and quality or lab employees and excludes office clerical employees, professional employees, staffing agency employees, guards and supervisors as defined in the National Labor Relations Act ("the Act").

I. INTRODUCTION AND PROCEDURAL HISTORY

The Petitioner United Food & Commercial Workers Union Local No. 324 (the "Union") filed the above captioned matter on July 28, 2014. *See* Board Exhibit 1(a). The Union sought an

election in the following unit at the Employer's Fullerton California consumable oils production facility ("the facility"):

Included: All Full time and Part time regular production employees

Excluded: Managers, supervisors, leadmen [sic], office clerical, temporary employees (temps) and guards as defined in the act [sic].

Later, and prior to the hearing in this matter, the Union changed this position and claimed to seek only a unit of packaging and shipping employees. The Union changed its position again before the hearing. It amended its petition on the record and now seeks a unit of packaging, shipping, and receiving employees excluding all others that work at the facility. *See* Tr. 11¹.

A hearing was conducted in this matter on August 12, 2014. The record makes plain that the unit sought by the Union is not appropriate. The record establishes instead that the Fullerton facility is a single and fully integrated processing and packaging operation where all employees share an overwhelming community of interest. Thus, the only appropriate unit consists of the unit sought by the Employer and it is in this unit that an election should be ordered.

II. THE RECORD FACTS

A. The Employer's Operation

The plant at issue is located in Fullerton, California. It blends and ships consumable oils. Tr. 24-25. The oil is received in bulk by rail or tanker truck. Tr. 26 and Employer Exhibit 1 at areas 1 and 2. After being tested at the facility's laboratory (Employer Exhibit 1 at area 15), it is stored in the terminal area for further processing or shipping. Tr. 26 and Employer Exhibit 1 at areas 3, 4, and 5. Oil can be blended. Tr. 27-28 and Employer Exhibit 1 at areas 5 and 7. Blended and unblended oil can have its viscosity adjusted. *E.g.* Tr. 62 and Employer Exhibit 1 at

¹ All transcript references refer to the transcript of the hearing in this matter held on August 12, 2014.

areas 5, 8 and 15. Oil can be loaded on to tanker trucks and shipped in bulk. Tr. 27 and Employer Exhibit 1 at area 6. It can also be packaged in a variety of forms and shipped via truck. Tr. 28 and Employer Exhibit 1 at areas 3 through 5 and 7 through 11.

The manner in which oil is processed and packaged for shipping is established by Kelly Stiver, the facility production scheduler. Tr. 40. She bases her schedules on customer demand. Once scheduled, the packaging lines are overseen by the line operators. Tr. 152 -53. Shipping is controlled by a process that serves trucks in the order they present themselves to the facility for loading. Tr. 30, 154.

Currently the Employer employs approximately 60 employees excluding those not sought to be included in the voting unit by either party in this matter. Tr. 15, 266-68 and Employer Exhibit 2. Generally they work three shifts (first, second and third). *See* Employer Exhibit 2. As discussed below, each employee in this single integrated process has an overwhelming community of interest with all other employees in the process.

B. The Terminal Employees.

As explained above, oil is received at the facility by rail or by truck. There currently are eight terminal employees. Employer Exhibit 2. They work all three shifts. Terminal employees make first (and sometimes last) contact with these bulk shipments. Some align and unload rail cars. Tr. 37 and Employer Exhibit 1 at area 1. Some unload trucks. Tr. 41, 45, and 47. Employer Exhibit 1 at area 2. In each case, however, the terminal employee must physically walk a sample of the received oil to the lab building for analysis before the incoming shipment can be unloaded. Tr. 37 and Employer Exhibit 1 at areas 1 and 15 or 2 and 15. Thus, lab techs are in regular daily contact with terminal employees. Additionally, terminal employees will converse with votator employees in the packaging area to discuss delivery of oils from the

votator machine to the area where outgoing tanker trucks are loaded for customer delivery. Tr. 84-86 and Employer Exhibit 1 at area 5, 8 and 15. Thus, terminal employees can handle the oil at the last stage of the process, the shipping process, as well. The Union's witnesses concede that terminal employees are seen in the packaging areas for various purposes from time to time. *E.g.* Tr. 215, 246-47 and Employer Exhibit 1 at areas 5, 6, 8, 9, 10 and 13. It is undisputed that maintenance mechanics traverse throughout the facility on a regular if not daily basis to make repairs. *E.g.* Tr. 236. Thus, there is clearly regular interaction between the maintenance department employees and terminal employees. Employer Exhibit 1 at areas 3 through 7 and 13.

Further, almost half of the current terminal employees transferred from the packaging department to terminal area jobs on a permanent basis. *E.g.* Tr. 39-40, 44-45, and 49.² Moreover, the Union's own witness Carlos Alban ("Alban") concedes that he filled in for employees and worked in the maintenance shop located in the terminal area Tr. 213-14 and Employer Exhibit 1 at areas 17 and 13. Thus, there is regular interaction as well as temporary and permanent transfer of employees from the unit sought by the Union to areas the Union seeks to exclude.

² The Union tried to suggest, without any evidence, that some of these transfers might have been temporary staffing employees when the transfers were made from packaging to the terminal area. Tr. 126-27. Even if true in part, and there is nothing in the record to support this guess, the observation is irrelevant. The undisputed facts are that all of these transfers are employed by the Employer, worked in packaging, and then transferred permanently to terminal where they work today.

C. The Quality or Lab Employees

There currently are four lab techs (or quality employees –the terms are interchangeable³) working on the first and third shifts. Tr. 51-68 and Exhibit 2. They operate out of the lab building marked as area 15 on Employer Exhibit 1. Tr. 31. Oil does not move from one area of the plant until after it is tested by these employees. Tr. 51-52. Thus, and as mentioned above, terminal employees bring samples to the lab for testing when the tank cars or trucks are received. Tr. 36-40 and Employer Exhibit 1 at areas 1, 2, and 15. Other terminal employees will bring samples as oil moves through the terminal area. *E.g.* Tr. 41 and Employer Exhibit 1 at areas 3 through 7 and 15.

Samples are brought multiple times on a daily basis from the packaging area to the lab building. Employer Exhibit 1 at areas 8, 9, 10, and 15. Thus, leads bring oil samples from the lines in the packaging area and the holding tanks in the terminal area to the lab multiple times per day. Tr. 60, 82. If a lead is not available, the reliever or another operator may bring the sample. *Id.*; *see also* Employer Exhibit 1 at areas 5, 9, and 15. Votator operators bring samples to the lab a minimum of one time a day and in many cases more often, depending on whether there are problems with viscosity measurements or how many different types of oil are run through the votator that day. Tr. 53-54, 84-85 and 129-30. Each type of oil run through the votator on any given day must be delivered to the lab by the votator operator and tested by the lab employees one or more times. Tr. 85 and 129 and Employer Exhibit 1 at areas 8 and 15. Similarly, the three OLE line operators regularly take samples from their work area to the lab. Tr. 71, 74, and 83 and Employer Exhibit 1 at areas 9 and 15.

³ At the hearing, the parties stipulated that references to “lab employees” in the transcript refer to quality employees. Tr. 39.

Similarly, lab employees regularly visit the packaging area for performance of their job functions. For example, lab tech Steve Lim walks the packaging and shipping floor at least twice a week with a rabbi to ensure that Kosher standards are being met. Tr. 54-56. He and the other lab techs also make regular visits to do such things as monitor sanitation standards and requirements, check and collect paperwork, and check on the new OLE line which runs several times a week. Tr. 54-58 and 61. Thus, there is daily, regular and constant interaction between and among lab, packaging and terminal employees.

D. The Packaging Employees

There are approximately 23 packaging employees working on three shifts. Tr. 68-92 and Employer Exhibit 2. They operate regularly four packaging lines: the 5 quart line; the 35 lb. JIB (jug in a box line); the 50 lb. cube line; and the OLE line. Tr. 68-69. Again, and as made clear above, these employees have regular daily contact with other groups the Employer seeks to have included in the unit.

For example, the two packaging leads regularly take oil samples from the line to the lab area, usually several times per day. Tr. 82-83 and 89 and Employer Exhibit 1 at areas 9 and 15. Relievers, whose job is to fill in for any employee, also take samples to the lab, particularly when leads are busy or otherwise unavailable. Tr. 60, 70-71, and 82. Additionally, machine operators also take samples to the lab from time to time. Tr. 60 and Employer Exhibit 1 at areas 9 and 15.

The two votator operators operate a special piece of machinery designed to adjust the viscosity of the oil. Tr. 83-86 and Employer Exhibit 1 at area 8. They must take and submit a sample to the lab every time they run a type of oil. This happens at least once a day and frequently more often. *Id.* and Tr. 129. Employer Exhibit 1 at areas 8 and 15. Votator operators also have regular phone contact with loaders in the bulk truck loading area of the terminal to

discuss when oil will be ready for bulk loading. Tr. 86 and Employer Exhibit 1 at areas 8 and 16.

Similarly, the OLE operators are required to take samples to the lab. This happens several times a week as well. Tr. 71, 74, and 83 and Employer Exhibit 1 at areas 9 and 15.

Thus, at least nine of the 23 packaging employees (two leads, two relievers, two votator operators and three OLE operators) are required to deliver samples to the lab in the terminal area as a part of their regular, if not daily, job duties. The votator operators also are in daily contact with loaders in the terminal area.

Further, union witness and the packaging "super user" Jose Padilla, an employee trained to assist other packaging employees with use of the relatively new SAP computer systems, admits he sees maintenance employees in the packaging area. He concedes that the week before his testimony he was in the terminal building (Employer Exhibit 1 at area 14) working on a "collaboration." He further concedes that in February through May his duties took him to that building in the terminal area on a regular basis. Tr. 233-35 and Employer Exhibit 1 at areas 18 and 14. This makes 10 of 23 packaging employees whose duties regularly take them to and/or are in daily communication with employees working in the terminal area.

Packaging employees are also visited regularly by those who operate from the terminal area. As described above, lab employees regularly visit the packaging area for a variety of reasons. Tr. 63 and Employer Exhibit 1 at areas 8, 9, 10, and 15. Kimberly Cruz, the engineering administrative assistant, regularly visits and consults with operators to help plan engineering projects. Tr. 71-73 and Employer Exhibit 1 at areas 8, 9, and 14. Even the Union's witnesses concede that maintenance mechanics are in the packaging area on a frequent or even daily basis to address equipment issues with operators and leads. Tr. 199, 228-229, 247 and

Employer Exhibit 1 at areas 8, 9, and 13. They also confirm that lab and terminal employees visit the packaging area regularly. Tr. 241, 247 and Employer Exhibit 1 at areas 8, 9, and 1 through 7.

Finally, packaging employees regularly advance from their entry level positions in packaging to the terminal area. Tr. 39-40, 44-45 and 49 and Employer Exhibit 1 at areas 9 and 1 through 7. As noted above, three of the current eight terminal employees transferred from packaging to their current terminal area positions.

Thus and again, it is plain that packaging employees are an integral part of a singular operation and have an overwhelming community of interest with employees all other employees working at the facility, including those in the terminal area.

E. The Shipping Employees

The Employer currently has nine shipping employees working one (first) shift. Employer Exhibit 2. Four of these employees load trucks. Tr. 96-104 (Messrs. Espinoza, A. Ramirez, Ramos, and Talbert). The others are plant clericals. Josh Ennault coordinates incoming trucks for loading and may help load as well. Tr. 96-97 and Employer Exhibit 1 at areas 11 and 18. Leonard Garcia is the inventory controller. Tr. 100-01. He sits in the front office area. *Id.* and Employer Exhibit 1 at area 18. He checks for order discrepancies and oversees stock transfers to third party logistics providers. Eddie Padilla is an SAP "super user" and helps coordinate application of the SAP software throughout the packaging operation, including coordination with terminal functions. Tr. 101-02, 233 and Employer Exhibit 1 at areas 18, 8, 9, and 14. Raymond Ramirez is the shipping lead. He spends most of time addressing computer issues. Tr. 102. Donna Teuscher is the transportation coordinator. She schedules package trucks and monitors bulk trucks for changes. Tr. 103 and Employer Exhibit 1 at areas 6, 11 and 18.

Trucks are loaded in the order they come to the building. Tr. 96-97. Thus, this department runs on a process that is well understood by the loaders and plant clericals. Tr. 154. There is no dispute that they are part of the integrated operation explained by the Employer. Tr. 11.

F. The Receiving Employees

The Employer currently has two receiving employees and one purchaser who work in the receiving area. Tr. 93-95. The receivers operate forklifts to unload and store raw materials entering the facility. Tr. 94-95 and Employer Exhibit 1 at areas 17 and 12. There is no dispute that these employees are called upon to pick up materials located in the terminal area of the facility for delivery to the receiving area and other areas of the plant. Tr. 94-95 and 245 and Employer Exhibit 1 at areas 11, 14, and 18. The purchaser, union witness Alban, concedes that he regularly interacts with employees in the shipping, receiving and packaging areas. Tr. 187 and Employer Exhibit 1 at areas 8, 9, 10, 11, 12, and 18. He admits that he sees maintenance and terminal employees in these areas. Tr. 215. He also admits that he has been called upon to fill for a maintenance employee in terminal area 13. Tr. 213. Further, he attends daily production meetings with employees from other the terminal area of the plant. Tr. 93-94.

Again, the evidence shows regular interaction between these employees and others in and from the terminal area.

G. The Maintenance Employees

There currently are four maintenance employees working on three shifts. Employer Exhibit 2. All of them work from a building in the terminal area. Tr. 104 and Employer Exhibit 1 at area 13. The Union concedes, as it must, that the mechanics regularly work in the packaging area. Tr. 199, 228-229, 247 and Employer Exhibit 1 at areas 8, 9, and 13. Indeed, to do

otherwise would be to deny the obvious as common sense requires one to recognize that maintenance mechanics will constantly be working in all areas of the facility to address whatever needs arise anywhere on the property. Tr. 104-08 and Employer Exhibit 1. Further, it is undisputed that the maintenance scheduler also works in all areas of the property all the time interacting with employees to plan for scheduled maintenance projects. Tr. 105-07. These employees are a fully integrated part of a single production process.

H. The Lead Employees

There are three lead employees. Two are production leads (Jaime Sedano first shift and Rafeal Rodriguez second shift). Raymond Ramirez is the packaging lead.

First, there is no evidence whatsoever to support any claim by the Union that Lab Tech 3 Steve Lim is even a lead employee, much less a supervisor. *E.g.* Tr. 54-56. He is not called a lead. Indeed, no one at the hearing even mentioned that anyone ever heard him called lead. There literally is no evidence that he ever exercised any indicia of supervisory status as set out in Section 2(11) of the Act.

Second, the packaging leads generally are responsible for monitoring the schedule for three packaging lines. They take samples from the packaging lines to the lab in the terminal area. Tr. 82-83 and Employer Exhibit 1 at areas 9 and 15. They also perform computer functions and update software as products proceed through the packaging lines. *Id.* They operate machines when necessary.

It is undisputed that they do not hire, fire,⁴ transfer,⁵ discipline, suspend, lay off, recall, promote, adjust grievances, or discharge employees. Tr. 166. To the extent leads might assign

⁴ Union Witness Alban contends that he fired someone while he was a lead and that a former supervisor told him he could do so. Tr. 184-85. Deceptively omitted from this testimony until

work at all, the work is ministerial in nature. Thus, there is nothing in the record referring to this element of supervisory status other than that Mr. Sedano may have told someone to dump reprocessed oil or that Mr. Ramirez might have instructed some employee to perform scheduled or routine materials audits. Tr. 167-68.

Similarly, there is no evidence in the record at all that shipping lead Ray Ramirez exercises any indicia of supervisory status. The only thing suggested by the record is that he assigns employees to help complete periodic audits called cycle counts. Tr. 167-68.

None of these employees are statutory supervisors. Indeed, no union witness testified that he considered any lead his supervisor. All leads should be included in the unit of eligible voters.

brought out on cross examination was the essential facts that he allegedly did this while employed by a temporary agency, not the Employer, and that he allegedly fired another temporary employee and not an employee of the Employer. Tr. 195. Neither he nor anyone else gave any examples of any lead person employed by the Employer taking any disciplinary action against employee of the Employer. Indeed, Alban's testimony was characterized by a series of inaccurate generalities which were revealed to be untrue when pressed on cross examination. *Compare* Tr. 184-85 with 195 (omitting the fact he allegedly terminated someone for an entity other than the Employer); 188 and 215 (claiming he only saw one person lab person from the terminal side then later admitting he saw others, including a maintenance employee the day before he testified); Tr. 198 (refusing to admit that he could not see who was in other areas of the facility while he was sitting in his office even though counsel for the Union readily agreed to stipulate to this obvious fact). He is a completely unreliable witness.

⁵ Alban also contends that he was "transferred" to his current position by packaging lead person Sedano. Tr. 189-90. Consistent with his other inaccurate generalities, though, Alban could not even be sure that Mr. Sedano was lead person at the time of this "transfer" (Tr. 204-05), admitted that he was interviewed by someone outside the packaging chain of command (Tr. 203-04), and no idea what weight, if any, Sedano's alleged recommendation might have had (Tr. 205). Similarly, Union witness Carlos Hernandez alleges that Sedano "transferred" him to receiving when Mr. Sedano merely instructed him to report receiving. Tr. 233-34. Again, he had no idea at all from where Mr. Sedano's alleged instruction might have come. Tr. 249. He also said that Sedano instructed him to run a palletizer. Tr. 250. Significantly, there is no evidence in the record that anyone gave Sedano any power to transfer anybody. The Union made no effort to subpoena him. The Union did not offer any evidence that any other lead person ever did or tried to transfer any employee.

I. Other Relevant Facts.

In addition to the conclusive evidence of overwhelming community of interest set out above, the following facts are also relevant: packaging, receiving, shipping, and terminal are all supervised by Stephanie Puig ("Puig") and this is not the first time that this has been the case (Tr. 92-93 and 113-15); all employees in the unit sought by the Employer have the same employee benefits (e.g. Tr. 164); employees in the unit sought by the Employer have the same general pay range (Tr. 162-64); any employee may use any of the break rooms on the premises, including the one in the terminal area (Tr. 110-12); any employee may use any of the time clocks located throughout the facility, including the one in the terminal area (Tr. 171); employees from all areas of the facility, including union witness Alban, attend the daily 10:00 a.m. production meeting held in the packaging area of the plant (Tr. 93-94 and Employer Exhibit 1 at area 16); there is no assigned parking by classification and employees may park anywhere near the plant that is convenient to them. Tr. 140-45. The maintenance department will be moving to the same building as the packaging operation in the near future. Tr. 178-79.

III. ARGUMENT

A. The Regional Director Should Not Utilize the Community of Interest Test Set Out In *Specialty Healthcare* and Should Instead Return the Board's Traditional Community of Interest Test.

In *Specialty Healthcare and Rehabilitation Ctr. of Mobile*, 357 NLRB No. 83, 2011 NLRB LEXIS 489 (2011), a three to one decision by a four-member Board consisting of members Wilma Liebman, Craig Becker, Mark Pearce, and Brian Hayes (dissenting) changed the manner in which appropriate units are decided. In essence, the Board set a new standard "...for those cases in which an employer contends that a proposed bargaining unit is inappropriate because it excludes certain employees. In such cases, the Board stated that the

employer will be required to show that the excluded employees share an ‘overwhelming community of interest’ with petitioned for employees.” *Id.*, slip op. at 14.

It is well-recognized that Board tradition requires a complete Board and a three-member majority to overturn existing precedent. *See Local Joint Executive Bd. of Las Vegas v. NLRB*, 657 F.3d 865, 866-867 (9th Cir. 2011). Nevertheless, in *Specialty Healthcare*, the Board overturned long standing precedent with only two validly appointed members in the majority.

In *New Vista Nursing and Rehabilitation v. NLRB*, 719 F.3d 203 (3rd Cir. 2013) (rehearing granted August 11, 2014), the Third Circuit invalidated the appointment of Member Becker which occurred one day after the Senate recessed for two weeks. While the legality of Member Becker’s appointment might have been left unresolved by the Supreme Court’s decision in *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014), the certainty that Member Becker’s appointment will be found unconstitutional was not.

The Supreme Court repeatedly recognized that confirmation with advice and consent of the Senate is the preferred method of appointment. *Noel Canning*, 134 S. Ct. at 2558-59 and 2575. The Court also emphasized that the Recess Appointment Clause was not designed to resolve political disagreements between the Executive and Legislative Branches of the federal government. *Id.* at 2567 (political opposition alone is not enough to overcome presumption) and 2577 (the Recess Appointments clause was “not designed to overcome serious institutional friction”).

Member Becker was appointed one day after the Senate began a short recess from March 26 to April 10. *E.g. New Vista*, 719 F. 3d at 213, 218. This appointment was made after the Senate took procedural steps to reject his nomination. “Cloture Motion on Craig Becker, of Illinois, to be a Member of the National Labor Relations Board: Role Call Vote No. 22.”

Congressional Record (February 9, 2010) p. S527-528. Available from: Library of Congress (Thomas Online database); Accessed: 8/18/14. Thus, regardless of whether the recess is deemed presumptively too short to allow for the recess appointment of Member Becker under the standard articulated in *Noel Canning*, it is clear that the appointment nevertheless constitutes exactly the type of political end run by the Executive branch around the Legislative branch that the Supreme Court stated was improper.

Given that Member Becker's appointment will not survive a constitutional challenge, it is clear that the standard articulated in *Specialty Healthcare* will not survive further judicial scrutiny. At best, the Board had only three validly appointed members at the time it decided *Specialty Healthcare*. Thus, it failed without any reason to adhere to its tradition of deciding precedent setting cases by a majority of a full five member Board. Indeed, if the Board had just four members (assuming Member Becker's appointment is not valid), it is quite possible that *Specialty Healthcare* would have been a two to two decision with no change in the law. Under these circumstances, it is not appropriate to employ the standards of *Specialty Healthcare* at this time.

Finally, the Board in *Specialty Healthcare* recognized that single plant units historically are presumptively appropriate. *Specialty Healthcare*, 357 NLRB No. 83, slip op. at 7 fn. 16 (citing *Hilander Foods*, 348 NLRB 1200 (2006)). Regardless of whether the Regional Director decides to use *Specialty Healthcare* or some other more traditional approach to decide the unit issues raised in this matter, the well-recognized presumption that a single plant unit is appropriate should be applied to the facts of this case. As discussed in detail below, the Employer operates a single integrated process at the facility at issue. Employees in all areas of the facility and at all stages of the process interact with each other and rely upon each other to do

their jobs. They transfer from position to position on both temporary and permanent bases and assist each other across classifications. If the Union is allowed to fracture this process by carving it up into little pieces, this could easily have the effect of inhibiting the exercise of Section 7 rights by affected employees. Thus, fragments of the employees working at the plant might have to make choices about transfers, cross training, and other decisions that enhance their ability to advance and secure their employment based upon whether they desire to exercise their Section 7 right to belong or not belong to a labor organization. Performance of duties within the plant could be confused by conflicting work rules that can create serious safety concerns in an operation like that at issue here.

As a result, it is bad law and bad policy to allow the Union to fracture the single integrated production process at issue in this case. For these reasons, as well as those discussed below, the Regional Director should conclude that the Union's proposed unit is not appropriate in these circumstances and that the only appropriate unit is the one proposed by the Employer.

B. Regardless of the Standard Used, the Unit Sought by the Union is Inappropriate

It is clear under any analysis that the maintenance, terminal, and quality employees belong in the appropriate unit. The Region should so conclude. Under the Act, any petitioned-for unit must be "an appropriate unit." *In re Boeing*, 337 NLRB 152 (2001) (smallest appropriate unit must include *all* production employees due to highly integrated work, regardless of separate supervision and work areas). While the unit need not be the "only appropriate unit" or the "most appropriate unit," the Board must nonetheless determine that the petitioned-for unit is "appropriate." *Id.* While the Union is free to petition for whichever employees it desires, the Region must recognize the longstanding principle that "the Board cannot stop with the observation that the petitioner proposed the unit" and instead must determine if the proposed unit

is appropriate. *Specialty Healthcare*, 357 NLRB No. 83, slip op. at 9 (citing *Metropolitan Life Ins. Co.*, 380 US 438, 442 (1965)).

The Board stated in *Seaboard Marine, Ltd.*, 327 NLRB 556 (1999) that “it is well established that the Board does not approve fractured units, *i.e.*, combinations of employees that are too narrow in scope or that have no rational basis.” *Id.* (citing *Colorado National Bank of Denver*, 204 NLRB 243 (1973)). In *Seaboard Marine*, the Board held that the petitioned-for unit of employees was inappropriate because the employees “d[id] not share a sufficiently distinct community of interest from other employees to warrant a separate unit and, therefore, that the unit grouping sought by the Petitioner is an arbitrary one.” *Id.* (citing *Brand Precision Services*, 313 NLRB 657 (1994); *Transerv Systems*, 311 NLRB 766 (1993)).

As the Board held in *TDK Ferrites Corp.*, 342 NLRB 1006, 1008 (2004), a union’s attempt to selectively petition for “maintenance department employees, production technicians, tool specialists, and set-up specialist” separate from the rest of the employer’s production employees in their “highly integrated” operation, was inappropriate. *Id.* The Board held that, based on the high degree of interaction of petitioned-for employees with non-petitioned-for employees and other shared community of interest factors, the unit was not “composed of a distinct and homogeneous group of employees with interests separate and apart from other employees at the Employer’s plant” and, therefore, such a unit could not be justified. *Id.*

The Board reaffirmed these principles in *Specialty Healthcare*, 357 NLRB No. 83, slip op. at 13:

A petitioner cannot fracture a unit, seeking representation in “an arbitrary segment” of what would be an appropriate unit. *Pratt & Whitney*, 327 NLRB 1213, 1217 (1999). “[T]he Board does not approve fractured units, *i.e.*, combinations of employees that ... have no rational basis.” *Seaboard Marine*, 327 NLRB at 556 (1999).

The Board also held that when there are “no rational basis for excluding” groups of employees from other petitioned-for employees who share little or no more community of interest than those petitioned for, the unit is inappropriate. *Odwalla, Inc.*, 357 NLRB No. 132 (2011). The Board said “none of the Board’s traditional community-of-interest factors suggests that all the employees in the recommended unit share a community of interest that the [non-petitioned-for employees] do not equally share, such that the community-of-interest factor would reasonably support drawing the unit’s boundaries to include [the petitioned-for employees], but *not* the [non-petitioned-for employees].” The Board in *Odwalla, Inc.* cited the language of *Blue Man Group, LLC v. NLRB*, 529 F. 3d 417, 421 (D.C. Cir. 2008), stating there is “no legitimate basis upon which to exclude” the [non-petitioned-for employees] while at the same time including all the other classifications in the recommended unit.” 357 NLRB No. 132, slip op. at 5.

The maintenance, terminal, and quality employees do not share a distinct community of interest from the packaging, shipping, and receiving employees as to justify their exclusion from any bargaining unit. Exactly the opposite is true. They share equally the same community of interest as those in the Union’s proposed unit share with each other.

In assessing whether employees share a community of interest, the Board examines a variety of factors, including: 1) similarity in method of wages or compensation; 2) similarity in hours of work; 3) similar employee benefits; 4) shared supervision; 5) the degree of similar qualifications, training, and skills; 6) similar job functions; 7) frequency of contact with other employees; 8) integration with the work functions of other employees or interchange with them; and 9) history of bargaining. See *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 137 (1962). Applying these factors to the unit proposed by the Union demonstrates that the unit is obviously fractured and must include all of the employees sought by the Employer.

1. The Employees in the Unit Sought by the Employer Are So Functionally Integrated That They Must Be Included In Any Appropriate Unit

Under the Board's well-established policy against fractured units, the unit sought by the Union is not appropriate as excluding the maintenance, terminal, and quality employees would arbitrarily exclude employees who have a community of interest with them. The employees in the unit sought by the Employer have frequent interaction and are part of a single functionally integrated process of packaging and shipping consumable oils. Each classification sought be included by the Employer relies on all the other classifications sought by the Employer in order to complete their necessary duties. As set forth above, oil is received and samples are taken from this oil to and from numerous parts of the facility by a large variety of packaging and terminal employees during many parts of the blending, packaging and shipping process.

During this single integrated process, terminal employees are frequently in the packaging area and vice versa, maintenance employees work throughout the facility, and the lab techs frequently interact with packaging and terminal employees in both the terminal and packaging areas of the facility. Employees are not restricted to a particular work area and, as the Union acknowledges, the employees in the unit sought by the Employer have frequent and, indeed, daily contact with each other. All of this interaction is part of one integrated production process and one part of the production cannot occur without the other parts functioning and assisting.

The Board has routinely held that employees who have this level of regular, job-related contact with petitioned-for employees in a functionally integrated operation *must* be included in any unit found to be appropriate. *See, e.g., Publix Super Markets*, 343 NLRB 1023, 1025 (2004) (“[T]here is a significant amount of functional integration . . . , which results in a significant amount of work-related contact among employees.”); *Caesars Tahoe*, 337 NLRB 1096, 1100 (2002) (including an engineering coordinator in a unit of maintenance technicians, in part,

because he interacted with the technicians daily during his dispatching duties and in walk-throughs); *Virginia Manufacturing Co.*, 311 NLRB 992, 993 (1993) (holding it was error for the Regional Director to exclude a technical employee from the unit, saying his “regular contact with other unit employees, his receipt of identical benefits, and the degree to which his job is functionally integrated into the basic production processes are sufficient to establish a community of interest”).

Further, as the Board noted in *Clinton Corn Processing Co.*, 251 NLRB 954 (1980), where the employer’s corn syrup production process was a highly integrated production process with substantial functional and operational integration, the employees shared a community of interest requiring a single bargaining unit. In so finding, the Board held that the disputed employees’ functions “are critical to the entire manufacturing process, and that, as noted by the Employer if any one of those functions becomes inoperable, ‘The process must stop; goes down.’” *Id.* at 955.

The same is true for the employees in the unit sought by the Employer. The production process at the Employer’s facility is highly integrated and the employees in the unit sought by the Employer have frequent interaction. As noted by the Board in *Clinton Corn Processing*, without any of the employees sought by the Employer to be included in the unit, production could not occur. Each of the employees sought for inclusion by the Employer are required pieces in the single process of preparing the bulk oil for shipment to customers. Just like the shipping and receiving employees, the maintenance, quality, and terminal employees are “critical to the entire manufacturing process.” 251 NLRB at 955. Therefore, their inclusion in any appropriate bargaining unit is equally essential.

2. The Same Supervisor Oversees and Supervises All Packaging, Receiving, Shipping, and Terminal Employees Who Obviously Share Common Supervision

In addition, the employees in the unit sought by the Employer are overseen by virtually one supervisor and therefore, obviously share supervision. In *TDK Ferrites Corp.*, 342 NLRB at 1009, the Board found that where all employees were supervised and evaluated by the same supervisors, applying identical rules and policies, and subjecting them to the same discipline and rewards, a unit that did not include all employees under these supervisors was inappropriate. As set forth above, all of the packaging, receiving, shipping, and terminal employees currently are supervised by Puig.⁶ Puig is the direct supervisor of all of these employees and directly controls and directs their day to day work. If the Union's petitioned-for unit is found appropriate, only some of Puig's reports will actually be in the bargaining unit. This could lead to differing terms and conditions of employment for employees under Puig's control. The Region should not permit such a fractured unit. Such common supervision further demonstrates the community of interest between the packaging, receiving, shipping, and terminal employees.

Even if a new terminal supervisor is hired, there is no evidence that the employment conditions in the terminal area are any different than in the unit sought by the Union or that these identical conditions will change. Maintaining continuity throughout the facility is essential and requires one plant wide unit.

⁶ The Union made mention of the fact that Puig does not supervise all terminal employees all the time. The fact of the matter is that Puig has supervised both groups of employees on two separate occasions and her current status as supervisor for both groups is likely to continue for some time.

3. The Employees in the Unit Sought by the Employer Share Identical Benefits and Terms and Conditions of Employment Warranting the Finding of a Single Unit

The employees sought by the Employer for inclusion in the unit also share the same terms and conditions of employment. All employees share the same benefits and are on the same general pay scale. Such common terms and conditions of employment further evidence the community of interest all of the employees share. The Board has long recognized, common terms and conditions of employment such as those found in the instant case further emphasize a community of interest. In *J.C. Penney Co.*, 86 NLRB 920 (1949), the Board recognized that where employees shared similar terms and conditions of employment and of benefits, in conjunction with common supervision, such employees shared a community of interest requiring inclusion in any appropriate bargaining unit. *See also, International Bedding Company (IBC of Pennsylvania)*, 356 NLRB No. 168 (2011) (Where all employees engaged in the production of mattresses and shared benefits, work rules, employee meetings, break rooms, and some common supervision, a plant-wide unit was appropriate).

Under well-established Board precedent, there is no logical reason for excluding maintenance, terminal, and quality employees from the bargaining unit where they share the same working conditions and are so intertwined with the shipping, receiving, and packaging employees. *Odwalla, Inc.*, 357 NLRB No. 132 (2011).

4. All Employees Have Frequent Contact and Interact as Part of Their Daily Duties

In addition to the functional integration and frequent contact between employees in the completion of their job duties set forth above, all of the employees in the unit sought by the Employer use the same break rooms, time clocks, and parking areas. Packaging employees interact with employees in the terminal areas on a daily basis. They physically carry oil samples to the lab, talk to bulk delivery terminal employees on the phone, discuss breakdowns with

maintenance techs, and attend daily meetings among the groups. This frequent interaction is essential to completion of both the process at the facility and for the completion of the employees' duties. Even the Union acknowledges this frequent interaction between and among employees throughout the facility. This further supports the Employer's position that the unit sought by the Union is inappropriate and that the only appropriate unit is the one sought by the Employer.

5. Employees Frequently Interchange and Transfer Within Positions

In addition to the day-to-day integration between positions, the evidence establishes that many of the packaging employees have transitioned to positions within the terminal. In conjunction with the functional integration of the positions, such transfers further support the conclusion that all of the employees sought by the Employer share a community of interest. As the Board held in *Buckhorn Inc.*, 343 NLRB 201, 203 (2004), where there were permanent transfers between the two groups of employees and two-thirds of the employees in the maintenance department (which the union sought to exclude) were hired from the ranks of production employees (the only employees sought by the union), the unit sought was inappropriate because the maintenance and production employees shared a community of interest. Citing *TDK Ferrites Corp.*, 342 NLRB 1006, 1009-1010 (2004); *Greater Bakersfield Memorial Hospital*, 226 NLRB 971, 973 (1976). In the instant case, almost half of the employees in terminal have transferred from packaging. As the Board held in *Buckhorn Inc.*, where employees have such interchange and frequently engage in permanent transfers, the only appropriate unit includes all employees.

6. Summary

For all of the reasons set forth above, the only appropriate unit is one that includes all maintenance, terminal, shipping, receiving, packaging, and quality employees who share an overwhelming community of interest. The maintenance, terminal, and quality employees clearly share a community of interest with the packaging, receiving, and shipping employees as to mandate their inclusion in any appropriate bargaining unit. Even if the standards articulated in *Specialty Healthcare* are used, it is clear that the employees of the single integrated process at issue in this case have an overwhelming community of interest. It would create bad law and policy to conclude otherwise in the circumstances of this case. There is no legitimate reason to exclude any of the maintenance, terminal, or quality employees and any exclusion would be arbitrary – resulting in an inappropriate, fractured unit. The unit sought by the Employer is the only appropriate unit and the Regional Director should so conclude.

C. The Production Leads, Packaging Lead, and Lab Tech 3 Are Not Supervisors Under the Act and Therefore Should be Included in the Bargaining Unit

Section 2(11) of the Act states:

The term “supervisor” means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to address their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Under well-settled Board law, the party asserting supervisory status bears the burden of proof. *Oakwood Healthcare, Inc.*, 348 NLRB 686, 687 (2006); *NLRB v. Kentucky River Community Care*, 532 US 706, 711-712 (2001). In addition, any lack of evidence is construed against the party asserting supervisory status. *Elmhurst Extended Care Facilities, Inc.*, 329

NLRB 535, 536 fn. 8 (1999). The Board has frequently cautioned against finding supervisory authority based only on infrequent instances of its existence. *Family Healthcare, Inc.*, 354 NLRB 254 (2009) (overruled on other grounds); *Golden Crest Healthcare*, 348 NLRB 727, 730 fn. 9 (2006). As such, “the exercise of some supervisory authority in a merely routine, clerical, perfunctory or sporadic manner does not confer supervisory status on an employee.” *Somerset Welding & Steel, Inc.*, 291 NLRB 913 (1988), *quoting Feralloy West Co.*, 277 NLRB 1083, 1084 (1985).

The record is wholly devoid of any evidence that the production leads, packaging lead (hereinafter referred to collectively as “the leads”), or Lab Tech 3 exercise any supervisory authority. The Union utterly failed to establish any evidence that the leads or Lab Tech 3 have any authority to hire, fire, transfer, suspend, lay off, recall, promote, discharge, or discipline employees. At most, the record contains a passing reference opining that one lead might tell employees to dump reprocessed oil and another lead might have instructed some unidentified employee to perform routine materials audits.⁷

The only other “evidence” presented by the Union was testimony by Alban who claimed to have fired an employee. On cross examination, however, he was forced to admit that at the time he claims to have fired an employee, he was not employed by the Employer nor was the temporary agency employee he claims to have discharged. Under any analysis, this cannot form the basis for finding all leads are 2(11) supervisors where there were only a few isolated

⁷ Suggestions by the Union that leads “transferred” employees on two isolated occasions are also unavailing. At best, the Union’s evidence showed that leads might ask an employee to fill in where needed on a temporary basis or opine to a fellow employee without decision making authority who might be a good candidate for a transfer.

incidents where the leads provided limited instruction. Such ministerial actions have repeatedly been rejected by the Board as sufficient to establish supervisory status.

In *Dole Fresh Vegetables*, 339 NLRB 785 (2003), the Board rejected an employer's contention that lead employees were supervisors under the Act. In so doing, the Board emphasized that the job title "lead" does not determine supervisory status, rather "[t]he status of a supervisor under the Act is determined by an individual's duties, not by his title or job classification." *Id.* at 785, quoting *T. K. Hardin & Sons*, 316 NLRB 510, 530 (1995). Further, the Board held that any assignments of jobs by the leads were routine in nature and that any isolated instance of directing employees "does not rise to the level of independent judgment required to find that the leads exercise statutory authority." *Id.* at 785-786. Just like the leads in *Dole Fresh Vegetables*, the leads "lead" in title only. The leads do not exercise any supervisory authority and only engage in ministerial duties at the direction of the Employer.

The Union failed to establish that the leads do anything more than occasionally ask employees to assist as or where needed, or offer non binding opinions about who should work where. This, by its very definition, is what leads do. This is wholly insufficient to establish supervisory status.

With respect to the Lab Tech 3, the Union provided absolutely no evidence that he is even engaged in the same limited activities as the packaging or shipping leads, let alone exercised any supervisory authority. The Union fell woefully short of its burden and failed to establish that the Lab Tech 3 exercises any indicia of supervisory.

The Union failed to establish any evidence that the leads or the Lab Tech 3 are supervisors under the Act. As such, the leads and the Lab Tech 3 should be included in any bargaining unit determined appropriate by the Region.

IV. CONCLUSION

Consistent with the Board authority cited above and the record evidence from the hearing, the Region should decide that the smallest appropriate unit at Cargill for the purposes of the present petition is all full-time and regular part-time maintenance, terminal, shipping, receiving, packaging, and quality employees, including the production leads, packaging lead, and Lab Tech 3.

Respectfully submitted,

**OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, LLC**

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By: /s/

Douglas M. Topolski, Esquire
1909 K Street, Suite 1000
Washington, DC 20006
202.263.0242 (phone)
202.887.0866 (fax)

Ruth L. Goodboe, Esquire
34977 Woodward Avenue, Suite 300
Birmingham, Michigan 48009
248.723.6143 (phone)
248.593.2603 (fax)

Attorneys for Cargill, Inc.

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the within Post-Hearing Brief has been served by electronically filing same this 19th day of August, 2014 on:

Olivia Garcia, Regional Director
National Labor Relations Board, Region 21
888 S. Figueroa St, Floor 9
Los Angeles, CA 90017-5449

Also, I do hereby certify that a true and correct copy of the within Post-Hearing Brief has been served on the following individuals by email this 19th day of August, 2014: Sylvia Meza at sylvia.meza@nlrb.gov, Robert A. Cantore, Esq. at rac@gslaw.org, and Travis S. West, Esq. at twest@gslaw.org.

By: /s/
Counsel for Cargill, Inc.